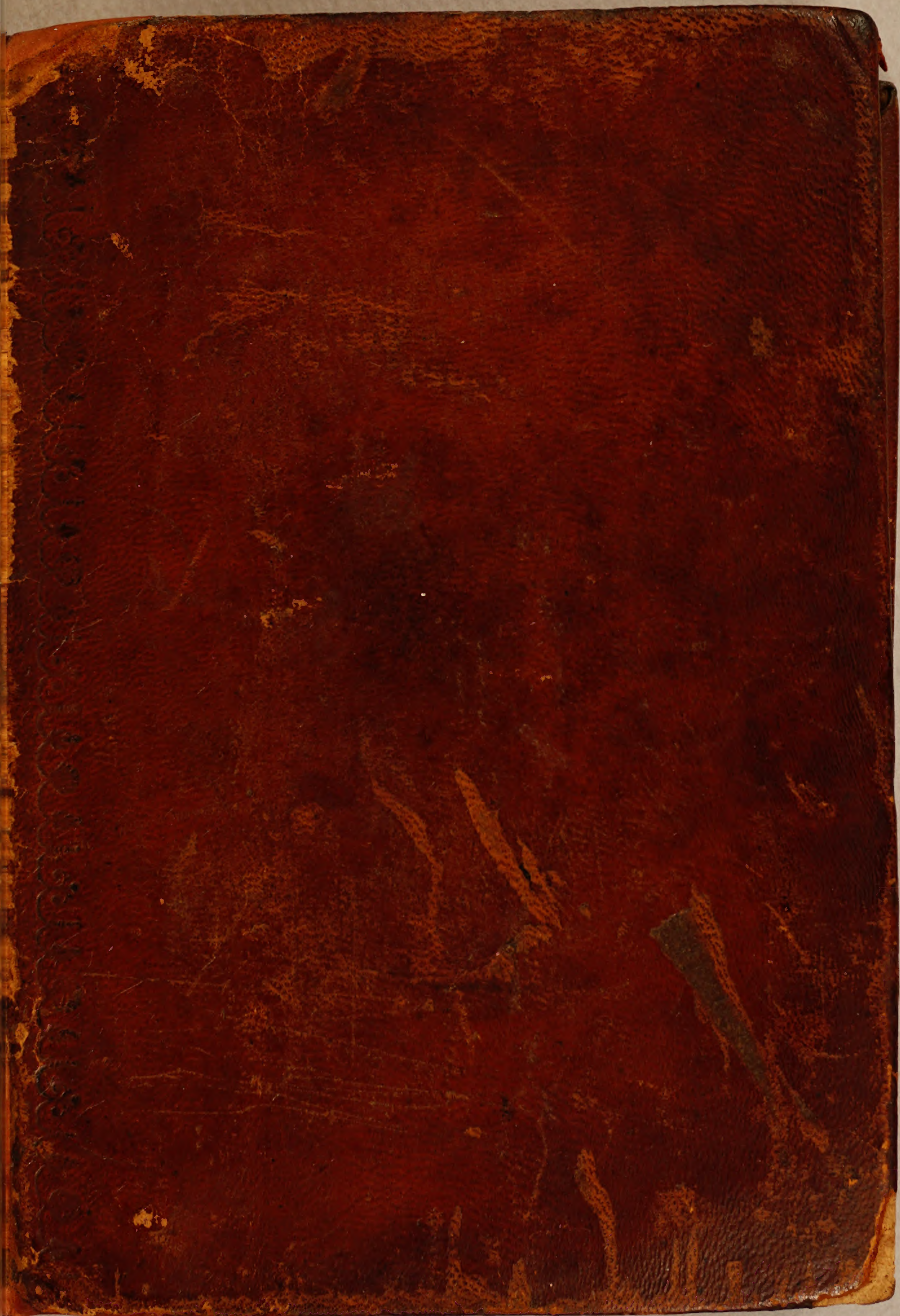
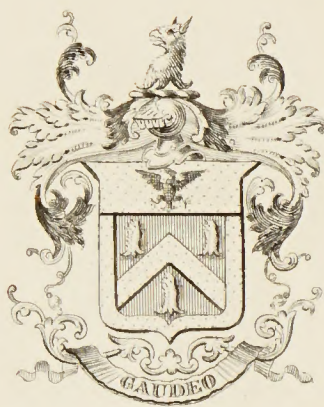




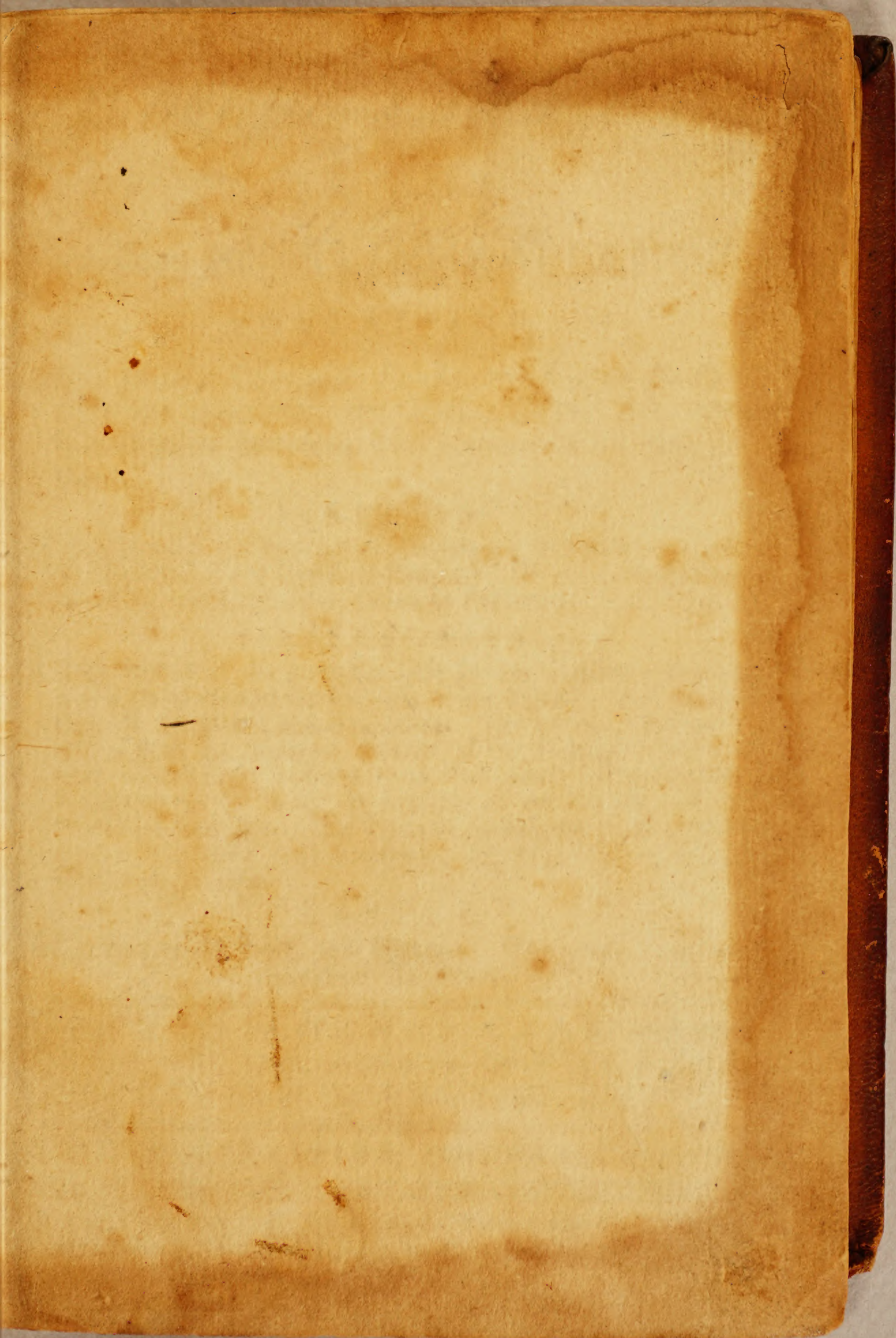


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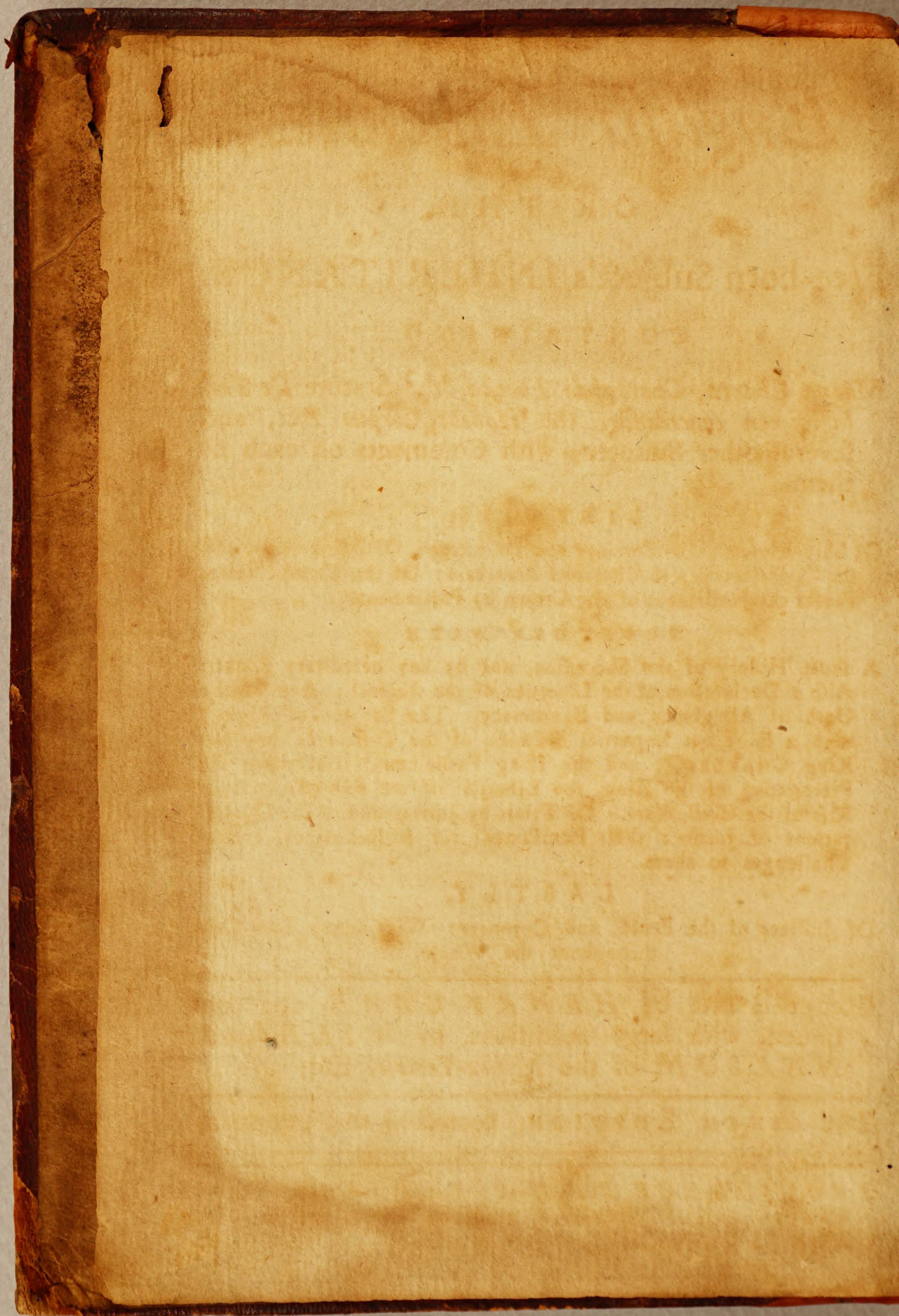


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# *English Liberties,*

OR THE

Free-born Subject's INHERITANCE.

CONTAINING

*Magna Charta, Charta de Foresta, the Statute De Tallagio non concedendo, the Habeas Corpus Act, and several other Statutes; with Comments on each of them.*

LIKEWISE,

Of Ship-Money: Of Tonnage and Poundage: Of Parliaments, and the Qualification and Choice of Members: Of the Three Estates, and of the Settlement of the Crown by Parliament.

TOGETHER WITH

A short History of the Succession, not by any hereditary Right: Also a Declaration of the Liberties of the Subject: And of the Oath of Allegiance and Supremacy. The Petition of Right; with a short but impartial Relation of the Difference between King CHARLES I. and the Long Parliament, concerning the Prerogative of the King, the Liberties of the Subject, and the Rise of the Civil Wars. Of Trials by Juries, and of the Qualifications of Jurors; their Punishment for Misbehaviour, and of Challenges to them.

LASTLY,

Of Justices of the Peace, and Coroners: With many Law-Cases throughout the Whole.

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Compiled first by HENRY CARE, and continued, with large Additions, by WILLIAM NELSON, of the Middle-Temple, Esq;

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The SIXTH EDITION, corrected and improved.

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PROVIDENCE, Rhode-Island: Printed and Sold by JOHN CARTER, at Shakespear's Head, in Meeting-Street, near the Court-House. MDCCLXXIV.



BPJCB



# P R E F A C E

To the Fifth Edition, printed in the Year 1721.

**T**H E favourable reception which all the former impressions of this treatise of the liberties of the subjects of England have met with from the public, seems to render it needless to use many words by way of preface to bespeak the reader's favour in behalf of this present edition of it: The title page is alone sufficient to shew the usefulness of the following sheets, and to recommend them to the perusal of all the true lovers of the liberty and welfare of their native country. The reader will here see, at one view, the many struggles which the people of this nation have had to rescue their almost oppressed liberties and religion from the servile bondage to which some of our Princes, prompted by ambition, and fond of arbitrary sway, or biggotted with a false zeal for a superstitious worship, have endeavoured to subject both the one and the other; and by what degrees we have secured to ourselves the enjoyment of both, till at length we are risen to such a height of prosperity, under the auspicious reign of our present august Monarch, that we are become the envy of the neighbouring states, our friends, and the terror of those that are our enemies. Let us then, by perusing this treatise, deeply imprint in our minds the laws and rights that from age to age have been delivered down to us from our renowned forefathers, and which they so dearly bought and vindicated to themselves at the expence of so much blood and treasure: In a word, let them never perish in our hands, but let us make our lives happy in the enjoyment of them, and piously transmit them to our posterity; being fully convinced of this truth, that when liberty is once gone, even life itself grows insipid, and loses all its relish.

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\* \* \* This sixth Edition being principally designed for America, a few Particulars are omitted, which were in the former Editions, such as concerning Constables, Churchwardens, Overseers of the Poor, and Surveyors of the Highways, whose Offices, Powers and Duties, are so differently made and exercised in England, that what the Author has said concerning them cannot be adapted to the same Officers in America, and would therefore be useless.—Proceedings in Appeals of Murder having been long rendered obsolete, are likewise omitted.—But to compensate amply for these Omissions, and make the Work as truly valuable, and more serviceable in America, a Number of excellent FORMS for Justices of the Peace, &c. are added; as also some Extracts from several late celebrated Writers on the British Constitution, which serve to illustrate and enforce the very important Doctrines advanced by the ingenious Author.



## ENGLISH LIBERTIES.

**T**H E constitution of our English government (the best in the world) is no *arbitrary Tyranny*, like the Turkish Grand Seignior's, or the French King's, whose wills, or rather lusts, dispose of the lives and fortunes of their unhappy subjects : Nor an *Oligarchy*, where the great ones, like fish in the ocean, prey upon, and live by devouring the lesser at their pleasure : Nor yet a *Democracy*, or popular state ; much less an *Anarchy*, where all confusedly are hail fellow well-met : But a most excellent mixt, or qualified *Monarchy*, where the King is vested with large prerogatives sufficient to support majesty, and restrained only from the power of doing himself and his people harm, which would be contrary to the very end of all government, and is properly rather weakness than power ; the nobility adorned with privileges to be a screen to majesty, and a refreshing shade to their inferiors ; and the commonalty too so guarded in their persons and properties by the sense of law, as renders them freemen, not slaves.

In France, and other nations, the meer will of the Prince is law ; his word takes off any man's head, imposes taxes, seizes any man's estate, when, how, and as often as he lists ; and if one be accused, or but so much as suspected of any crime, he may either presently execute him, or banish, or imprison him at pleasure ; or if he will be so gracious as to proceed by form of their laws, if any two villains will but swear against the poor party, his life is gone. Nay, if there be no witnesses, yet he may be put to the rack, the tortures whereof

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make



make many an innocent person confess himself guilty, and then with seeming justice he is executed; or, if he prove so stout, as in torments to deny the fact, yet he comes off with disjointed bones, and such weakness as renders his life a burthen to him ever after.

But in England, the law is both the measure and the bond of every subject's duty and allegiance, each man having a fixed fundamental right born with him, as to freedom of his person, and property in his estate, which he cannot be deprived of, but either by his consent, or some crime, for which the law has imposed such a penalty or forfeiture. For all our Kings take a solemn oath\*, at their coronation, 'to observe and cause all the laws to be kept †.' Likewise all our Judges take an oath, wherein, amongst other points, they swear ‡, 'to do equal law and right to all the King's subjects, rich and poor, and not to delay any person of common right for the letters of the King, or of any other person, or for any other cause: But if any such letters come to them, they shall proceed to do the law, the same letters notwithstanding.' Therefore, saith Fortescue (who was first Chief Justice, and afterwards Lord Chancellor to King Henry the sixth) in his book *de Laudibus Legum Angliæ*, cap. 9, 'the King of England cannot alter nor change the laws of his realm at his pleasure: For why, he governeth his people by power not only royal, but also politic: If his power over them were only regal, then he might change the laws of his realm, and charge his subjects with tallage, and other burthens, without their consent; and such is the dominion that the civil laws purport, when they cry, *quod principi placuit legis habet vigorem*, the Prince's pleasure has the force of a law. But from this much differeth

\* See Book of Oaths, p. 1 and 3. † Baker's Chron. fol. 741.

‡ Book of Oaths, p. 216.



' differeth the power of a King, whose government  
 ' over his people is politic: For he can neither change  
 ' a law without the consent of his subjects, nor yet  
 ' charge them with impositions against their wills:  
 ' Wherefore his people do frankly and freely enjoy and  
 ' occupy their own goods, being ruled by such laws as  
 ' they themselves desire.' Thus Fortescue, with whom  
 accords Bracton, a reverend Judge and law-author, in  
 the reign of King Henry the third, saying, ' the King  
 ' in his realm hath two superiors, God and the law;' for  
 he is under the directive, though not coercive power of  
 law. And on the same score Judge Vaughan, speaking  
 of our fundamental laws, which are coeval with the go-  
 vernment, sticks not to say, ' the laws of England were  
 ' never the dictates of any conqueror's sword, or the  
 ' *placita*, or good will and pleasure of any King of this  
 ' nation, or, to speak impartially and freely, the re-  
 ' sults of any Parliament that ever sat in this land.' And  
 the late cited Fortescue, in his 13th chap. has a very apt  
 similitude to illustrate and demonstrate this: ' The law,  
 ' saith he, taketh its name, *a ligando*, to bind; for  
 ' thereby the politic body is knit and preserved together,  
 ' as the natural body by the bones, sinews and mem-  
 ' bers, which retain every one their proper functions:  
 ' And as the head of a body natural cannot change  
 ' its sinews, nor cannot deny or with-hold from its in-  
 ' ferior members their peculiar powers, and several nou-  
 ' rishments of blood and spirits; no more can a King,  
 ' which is the head of a body politic, change the laws of  
 ' that body, nor withdraw from his people their proper  
 ' substance, against their wills and consents in that be-  
 ' half.'

'Tis true, the law itself affirms, the King can do no  
 wrong; which proceeds not only from a presumption,  
 that so excellent a person will do none, but also because



he acts nothing but by ministers, which, from the lowest to the highest, are answerable for their doings; so that if a King in his passion should command A. to kill B. without process of law, A. may yet be prosecuted by indictment, or upon an appeal, where no royal pardon is allowable, and must for the same be executed, such command notwithstanding.

This original happy frame of government is truly and properly called an *Englishman's liberty*, a privilege not to exempt from the law, but to be freed in person and estate from arbitrary violence and oppression. 'A greater inheritance, saith Judge Coke, is derived to every one of us from our laws than from our parents;' for, without the former, what would the latter signify? And this birthright of Englishmen shines most conspicuously in two things: 1. *Parliaments*, 2. *Juries*.

By the first the subject has a share, by his chosen representatives, in the legislative or law-making power; for no new laws bind the people of England, but such as are by common consent agreed on in that great Council.

By the second he has a share in the executive part of the law; no causes being tried, nor any man adjudged to lose life, member, or estate, but upon the verdict of his peers or equals, his neighbours, and of his own condition: These two grand pillars of English liberty are the fundamental privileges, whereby we have been and are preserved more free and happy than any other people in the world; and, we trust, shall ever continue so: For whoever shall design to impair, pervert, or undermine either of these, do strike at the very constitution of our government, and ought to be prosecuted and punished with the utmost zeal and rigour. To cut down the banks, and let in the sea, or to poison all the springs and rivers in the kingdom, could not be a greater

er



er mischief; for this would only affect the present age, but the other will ruin and enslave all our posterity.

But besides these general privileges, which the English are estated in by the original constitution of their government, there are others more particularly declared and expressed in divers acts of Parliament; of which several of the most remarkable and useful are here presented at large to the reader, with some notes thereupon, for his better understanding of the same.

And therefore, before I treat of these general privileges (I mean of Parliaments and Juries) I shall begin with Magna Charta, or the Great Charter, made in the reign of King John, but confirmed anno. 9 H. 3, and 28 Ed. 1.

'Tis true, the original charter is not to be found amongst the rolls in the Tower, there being nothing left of it on record but the statute of confirmation, anno. 28 Ed. 1; but it was certainly inrolled at the very time it was made, as well as every grant made of markets and fairs in that King's reign; for no man can imagine that so much care should be taken to inroll such grants, and so little to record this Great Charter of our liberties, though through design or negligence in after-times it was not so carefully kept.

'Tis certain, that several copies of this Charter are still extant in the ancient annals of several of the dissolved monasteries, particularly in the annals of Burton-Abbey, lately published in the 1st vol. of ancient English Writers, fol. 271, and witnessed by Stephen Langston, who was Archbishop of Canterbury at that time, and by many others; because after the name of that Archbishop, there is an &c.

'Tis also recited in the Chronicle of Walter Hemmingford, printed at Oxford, anno. 1687, and published



ed by the learned Sir Thomas Gale, in his 2d vol. of ancient English Historians, only with this difference, that it hath not any witnesses names at the end of it, as that in the annals of Burton hath; but 'tis witnessed by the King himself, viz. *teste me ipso*; and both these copies agree with four more very ancient manuscripts of it, one in the reign of H. 3, when he was in his minority, and which is now to be seen in the Cotton library; a second was in the possession of Samuel Baldwin, late Serjeant at Law; a third was in the possession of John Coke, Esq; late one of the Prothonotaries of the Court of Common Pleas; and a fourth in the hands of Mr. Pettyl, late of the Inner Temple, and keeper of the records in the tower, in the reign of King William.

But to put this matter out of all doubt, there is still extant a fair original of this Charter of Confirmation, anno. 9 H. 3, when he was of full age, and 'tis under the great seal of England, supposed formerly to belong to Battail Abbey, and to be seen now in the hands of Sir Nath. Powell, a Bencher of the Inner Temple.

And here I cannot but observe, that those people must be of a very base and slavish temper, who object any thing against a Charter, which either grants or confirms their liberties; and yet such there are who tell us that it was extorted by force from King John, and defended by rebellion.

But these men do not consider that King John was not the first who granted such a charter, for those of H. 1, King Stephen, and Henry 2, confirm the liberties of the people.

Besides, these are not properly the concessions of Kings, but affirmations of the common law, and ratified by the suffrages of the people, who claimed them as their rights and privileges, and as their birthright: And they did not enter into war with that King (I mean  
King



King John) because he would not grant them new privileges, but because he abused them of those rights to which they were entitled, as well by the common law, as by the grants of any former Kings.

This excellent law holds the first place in our statute books; for though there were, no doubt, many acts of Parliament long before this, yet they are not now extant: 'Tis called Magna Charta, or the Great Charter, not in respect of its bulk, but in regard of the great importance and weight of the matters therein contained; it is also stiled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reason, (saith Coke in his poem) it is so called from the effect, *quia liberos facit*, because it makes and preserves the people free.

Though it run in the stile of the King as a charter, yet (as my Lord Coke well observes on the 38th chapter) it appears to have passed in Parliament; for there was then a fifteenth granted to the King, by the Bishops, Earls, Barons, freetenants and people; which could not be but in Parliament; nor was it unusual, in those times, to have acts of Parliament in the form of a charter; as you may read in the Prince's case, Co. Rep. L. 8.

Likewise, though it be said here, that the King hath given and granted these liberties, yet they must not be understood as meer emanations of royal favour, or new bounties granted, which the people could not justly challenge, or had not a right unto before; for the Lord Coke, at divers places, asserts, and all lawyers know, that this charter is, for the most part, only declaratory of the principal grounds of the fundamental laws and liberties of England; no new freedom is hereby granted, but a restitution of such as lawfully they had before, and to free them of what had been usurped and incroached upon them by any power whatsoever:  
And



And therefore you may see this charter often mentions *sua jura*, their rights, and *libertates suas*, their liberties, which shews they had them before, and that the same now were confirmed.

As to the occasion of this charter, it must be noted that our ancestors, the Saxons, had, with a most equal poise and temperament, very wisely contrived their government, and made excellent provisions for their liberties, and to preserve the people from oppression: And when William the Norman made himself master of the land, though he be commonly called the Conqueror, yet in truth he was not so; and I have known several Judges that would reprehend any gentleman at the bar, that casually gave him that title; for though he killed Harold the Usurper, and routed his army, yet he pretended a right to the kingdom, and was admitted by compact, and did take an oath to observe the laws and customs.

But the truth is, he did not perform that so as he ought to have done; and his successors, William Rufus, King Stephen, Henry I, and Richard likewise, made frequent incroachments upon the liberties of their people, but especially King John made use of so many illegal devices to drain them of money, that, wearied with intolerable oppressions, they resolved to oblige the King to grant them their liberties, and to promise the same should be observed, which King John did in Running-mead, between Stains and Windsor, by two charters, one called *Charta Libertatum*, the Charter of Liberties (the form of which you may read in Math. Paris, fol. 246, and is in effect the same with this here recited) the other the Charter of the Forest, copies of which he sent into every county, and commanded the Sheriffs &c. to see them fulfilled.

But



But by ill counsel he quickly after began to violate them as much as ever, whereupon disturbances and great miseries arose, both to himself and the realm.

The son and successor of this King John was Henry the third, who in the 9th year of his reign renewed and confirmed the said charters; but within two years after cancelled them, by the pernicious advice of his favourites, and particularly Hubert de Burgh, whom he had made Lord Chief Justice; one that in former times had been a great lover of his country, and a well-deserving patriot, as well as learned in the laws; but now, to make this a step to his ambition, which ever rideth without reins, persuaded and humoured the King, that he might avoid the charters of his father King John, by duress, and his own Great Charter, and *Charta de Foresta* also; for that he was within age when he granted the same: Whereupon the King, in the eleventh year of his reign, being then of full age, got one of the Great Charters, and of the Forest, into his hands; and by the counsel principally of this Hubert, his Chief Justice, at a Council holden at Oxford, unjustly cancelled both the said Charters, notwithstanding the said Hubert de Burgh was the first witness of all the Temporal Lords to both the said Charters; whereupon he became in high favour with the King, insomuch that he was soon after, viz. the 10th of December, in the thirteenth year of that King, created to the highest dignity that in those times a subject had, to be an Earl, viz. of Kent. But soon after (for flatterers and humourists have no sure foundation) he fell into the King's heavy indignation, and after many fearful and miserable troubles, he was justly, and according to law, sentenced by his peers, in an open Parliament, and justly degraded of that dignity, which he unjustly had obtained by his counsel, for cancelling *Magna Charta*, and *Charta de Foresta*.



MAGNA CHARTA, *or the GREAT CHARTER, made in the ninth Year of King Henry the Third, and confirmed by King Edward the First, in the twenty-eighth Year of his Reign.*

**E**DWARD, by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan: To all Archbishops, Bishops, &c. We have seen the Great Charter of the Lord Henry, sometimes King of England, our father, of the liberties of England, in these words :

**H**ENRY, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, &c. To all Archbishops, Bishops, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and other our faithful subjects, who shall see this present Charter, greeting. Know you, that we, unto the honour of Almighty God, and for the salvation of the souls of our progenitors and successors, Kings of England, to the advancement of holy church, and amendment of the realm, of our meer and free will, have given and granted to all Archbishops, Bishops, Earls, Barons, and all freemen of this our realm, these liberties following, to be kept in our kingdom of England for ever.

#### CHAP. I.

##### *A Confirmation of Liberties.*

**F**IRST, we have granted to God, and by this our present Charter have confirmed for us and our heirs for ever, that the church of England shall be free, and have all her whole rights and liberties inviolable. We have granted also, and given to all the freemen of our realm, for us and our heirs for ever, the liberties underwritten, to have and to hold to them and their heirs for ever.

CHAP.



## CHAP. II.

*The Relief of the King's Tenant of full Age.*

**I**F any of our Earls or Barons, or any other which hold of us in chief by Knight's service, die, and at the time of his death his heir be of full age, and oweth to us a relief, he shall have his inheritance by the old relief, that is to say, the heir or heirs of an Earl, for a whole earldom, by one hundred pounds: The heir or heirs of a Baron, for a whole barony, by one hundred marks: The heir or heirs of a Knight, for one whole Knight's fee, one hundred shillings at the most. And he that hath less shall give less, according to the old custom of the fees.

## N O T E S.

Knight's service was a tenure introduced here by William, called the Conqueror, who granted several lands to his subjects, to be held of him, to do him service in his wars. 'Tis now taken away by the statute 12 Car. 2, cap. 24, by which all such tenures are turned into free socage.

When the possessors of such lands died, it was called *Hereditas caduca*, i. e. it was fallen to the King, or to other Chief Lord, to whom the heir was to pay a sum of money, and then he was said *relevare hereditatem caducam*, out of his hands; and the money thus paid was called a relief.

The old relief was always paid in utensils of war, as horses, helmets, shields, &c. but such tributes could not be exacted of the English immediately after the conquest, for they were deprived of all manner of arms by the Normans, and paid money instead thereof; but by *Magna Charta* the old relief is restored.

## CHAP. III.

*The Wardship of an Heir within Age.*

**B**UT if the heir of any such tenant be within age, his Lord shall not have the ward of him, nor his land, before that he hath taken of him homage. And after that such an heir hath been in ward, when he is come to full age, that is to say, to the age of twenty-one years, he shall have his inheritance without relief,



lief, and without fine; so that if such heir, being within age, be made a Knight, yet nevertheless his land shall remain in the keeping of his Lord unto the term aforesaid.

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C H A P. IV.

*No Waste shall be made by a Guardian in Wards Lands.*

**T**H E keeper of the land of such an heir being within age, shall not take of the lands of the heir but reasonable issues, reasonable customs, and reasonable services; and that without destruction and waste of his men and goods. And if we commit the custody of any such land to the Sheriff, or to any other, who is answerable unto us for the issues of the same land, and he make destruction or waste of those things which he hath in custody, we will take of him amends and recompence therefore. And the land shall be committed to two lawful and discreet men of that fee, who shall answer unto us for the issues of the same land, or unto him whom we will assign. And if we give or sell to any man the custody of any such land, and he therein make destruction or waste, he shall lose the same custody. And it shall be assigned to two lawful and discreet men of that fee, who also in like manner shall be answerable to us, as aforesaid.

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C H A P. V.

*Guardians shall maintain the Inheritance of their Wards, and of Bishopricks.*

**T**H E keeper, so long as he hath the custody of the land of such an heir, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the same land, with the issues of the said land: And he shall deliver to the heir, when he cometh to his full age, all his land, stored with ploughs and all other



other things, at the least, as he received it. All these things shall be observed in the custody of the archbishops, bishops, abbies, priories, churches and dignities vacant, which pertain to us; except this, that such custody shall not be sold.

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## C H A P. VI.

*Heirs to be married without Disparagement.*

**H**EIRS shall be married without any disparagement.

## N O T E.

Where any man died, holding lands in Knight's service, having an heir an infant, such infant was to be in ward of the King, or other Chief Lord, of whom the lands were held; and he was to take care of the marriage, so that it, might be suitable to the degree and quality of the infant, and that he or she might not be disparaged by it.

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## C H A P. VII.

*A Widow shall have her Marriage Inheritance, and Quarantine. The King's Widow.*

**A** WIDOW, after the death of her husband, without any difficulty, shall have her marriage and inheritance. And shall give nothing for her dower, marriage, or inheritance, which her husband and she held the day of the death of her husband. And she shall tarry in the chief house of her husband, by forty days after the death of her husband, within which time her dower shall be assigned her, if it were not assigned before, or that the house be a castle. And if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as is aforesaid; and she shall have in the mean time her reasonable estovers of the common. And for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during the coverture, except she were endowed of less at the church door. No widow shall be distrained



to marry herself: Nevertheless she shall find surety, that she shall not marry without our licence and assent, if she hold of us, nor without the assent of the Lord, if she hold of another.

N O T E.

A widow shall have her marriage, that is, the goods which she brought to her husband in marriage, and likewise her dower, *i. e.* that portion of lands or tenements which were settled on her by her husband: And she had a special privilege to stay in the chief house for forty days, which is called a quarentine, unless such house was a castle: And the reason of this exception was, because there were several castles then in England, which were built for the defence of the kingdom, of which the widow could not be endowed, neither could she continue in them after the death of her husband, as not being a proper person to engage in any warlike enterprize, and therefore the next heir male was to have the castle, and the widow another house, and eslovers, that is, fuel to burn there, till her dower was assigned to her by the heir.

C H A P. VIII.

*How Sureties shall be charged to the King.*

**W**E, or our bailiffs, shall not seize any land or rents for any debt, so long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefore. Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. And if the principal debtor fail in the payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt. And if they will, they shall have the lands and rents of the debtor until they be satisfied of that which they before paid for him, except that the debtor can shew himself to be acquitted against the said sureties.



## CHAP. IX.

*The Liberties of London, and other Cities and Towns, confirmed.*

**T**HE city of London shall have all the old liberties and customs which it hath been used to have. Moreover, we will and grant, that all other cities and boroughs, towns, and the barons of the five ports, and all other ports, shall have all their liberties and free customs.

## CHAP. X.

*None shall distrain for more Service than due.*

**N**O man shall be distrained to do more service for a Knight's fee, nor for any freehold, than therefore is due.

## CHAP. XI.

*Common Pleas shall not follow the King's Court.*

**C**OMMON pleas shall not follow our court, but shall be holden in some place certain.

## CHAP. XII.

*Where and before whom Assizes shall be taken. Adjournment for Difficulty.*

**A**SSIZES of Novel Disseisin, and of Mortdances, shall not be taken but in the shires, and after this manner: If we be out of the realm, our Chief Justices shall send our Justices through every county once in the year; which, with the Knights of the shire, shall take the said assizes in those counties. And those things that at the coming of our aforesaid Justices, being sent to take those assizes in the counties, cannot be determined, shall be ended by them in some other place in their circuit. And those things which for difficulty of some articles cannot be determined by them, shall be referred to our Justices of the bench, and there shall be ended.

CHAP.



## C H A P. XIII.

*Affizes of Darrein Presentment.*

**A**SSIZES of Darrein Presentment shall be always taken before our Justices of the bench, and there shall be determined.

*NOTES on the Twelfth and Thirteenth Chapters.*

An affize of *Novel Disseisin* is a real action brought by a tenant in fee-simple, or in fee-tail, or for life, for lands of which he was lately disseized.

Affize of *Mortdancestor* is another real action, brought by the heir, where his ancestor died seized of lands, and after his death a stranger enters and possesses it.

Affize of *Darrein Presentment* lies where my ancestor presented to a church, and upon the next avoidance a stranger presents to the same church, and so disturbs me in my right of presentment.

These actions are now disused, and ejectments and *quare impedit* substituted in their room: Those affizes were instituted by H. 2, in the place of duels, which were formerly used in doubtful cases to decide titles.

## C H A P. XIV.

*How Men of all Sorts shall be amerced, and by whom.*

**A** FREEMAN shall not be amerced for a small fault, but after the manner of the fault: And for a great fault, according to the greatness thereof, saving to him his contenment. And a merchant likewise, saving to him his merchandize. And any other's villein than ours shall be likewise amerced, saving his wainage, if he fall into our mercy. And none of the said amerciaments shall be assessed, but by the oaths of honest and lawful men of the vicinage. Earls and Barons shall not be amerced, but by their peers, and after the manner of their offence. No man of the church shall be amerced after the quantity of his spiritual benefice, but of his lay tenement, and after the quantity of his offence.

*NOTES.*

An *Amerciament* is a penalty assessed by those in an equal degree with the offender, *i. e. per pares*, for which he puts himself upon the mercy



mercy of the King, or chief Lord; and 'tis usually for a small fault: But if it is for a great crime, the penalty must be greater, but yet with a saving of the *Contentement* of the criminal, by which word some are of opinion, that the credit or reputation which the man hath, by reason of his freehold, is intended; but that can never be the meaning of it in this place, but rather that which is necessary for his support, according to his condition or state of life; so that tho' he might be amerced, yet something must be left for his support; therefore the husbandman was to have his *Wainage*, i. e. his *Wain*, *Plough*, and utensils of husbandry, that he might till the land: The Sheriff did usually, by his officers, seize the estates of those who were in debt, and disposed the same to the payment of their debts; what remained was for the advancement of the wife and children, and if there were none such, then to the next of kin, and this is proved by the close roll 7 H. 3, Rot. 16. viz. *bona intestatorum capi solebant in manus nostras, &c.*

But Mr. Selden, who had seen that record, gives us another account of it, viz. that it was customary in those days for the Sheriff or other officer to seize the goods of the King's tenants who died indebted to him, in order, in the first place, to discharge that debt, and that one Fitz Dun was indebted to the King, and his goods seized after his death, and that the debt being paid, the King wrote to the Sheriff of Lincoln to deliver all the goods *in manus nostras capta*, to the Prior of Lockton, and other executors, *ad faciendum testamentum.*

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#### C H A P. XV.

##### *Making of Bridges and Banks.*

**N**O town nor freeman shall be distrained to make bridges or banks, but such as of old time, and of right have been accustomed to make them in the time of King Henry our grandfather.

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#### C H A P. XVI.

##### *Defending of Banks.*

**N**O banks shall be defended from henceforth, but such as were in defence in the time of King Henry our grandfather, by the same places, and the same bounds, as they were wont to be in his time.



## C H A P. XVII.

*Holding Pleas of the Crown.*

**N**O Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs, shall hold pleas of the crown.

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## C H A P. XVIII.

*The King's Debtor dying, the King shall be first paid.*

**I**F any that holdeth of us lay-fee shall die, and our Sheriff or Bailiff do shew our letters patent of our summons for debt, which the dead man did owe to us, it shall be lawful for our Sheriff or Bailiff to attach and inroll all the goods and chattels of the dead, being found in the said fee, to the value of the same debt, by the sight and testimony of lawful men; so that nothing thereof be taken away, until we be clearly paid off the debt. And the residue remain to the executors, to perform the testament of the dead. And if nothing be owing to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable parts.

## N O T E.

My Lord Coke tells us, in *Hensloe's case*. 9 Rep. 38, that the King, who is *patens patriæ*, was wont by his officers to seize the goods of the intestate, to the end they might be preserved and disposed of for the burial of the deceased, for the payment of his debts, for the advancement of his wife and children, if he had any; and if none, for those of his blood.

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## C H A P. XIX.

*Purveyance for a Castle.*

**N**O Constable, nor his Bailiff, shall take corn or other chattels of any man, if the man be not of the town where the castle is; but he shall forthwith pay for the same, unless that the will of the seller was to respite the payment. And if he be of the same town, the price shall be paid unto him within forty days.

C H A P.



## CHAP. XX.

*Doing of Castle Ward.*

**N**O Constable shall distrain any Knight to give money for keeping of his castle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself for a reasonable cause. And if we do lead or send him in an army, he shall be free from castle ward for the time that he shall be with us in fee in our host, for the which he hath done service in our wars.

## CHAP. XXI.

*Taking of Horses, Carts, and Woods.*

**N**O Sheriff nor Bailiff of ours, nor any other, shall take the horses or carts of any man to make carriage, except he pay the old price limited. No demesne cart of any spiritual person or Knight, or any Lord, shall be taken by our Bailiffs. Nor shall we, nor our Bailiffs, nor any other, take any man's wood for our castles, or other our necessities, but by the licence of him whose wood it is.

## CHAP. XXII.

*How long Felons Lands shall be holden by the King.*

**W**E will not hold the lands of them that be convicted of felony but one year and a day, and then those lands shall be delivered to the Lords of the fee.

## NOTE.

'Tis the King's prerogative to have the profits of the lands and tenements for a year and a day, of those who were attainted of treason or felony, whosoever is Lord of the manor of whom such lands are held; and not only so, but at the expiration of that time he might commit what waste he would, by destroying the houses, rooting up the woods, and ploughing the gardens, pasture and meadows, except the Lord of the fee would agree with him to redeem the waste which might be done.



## CHAP. XXIII.

*In what Places Wears shall be put down.*

**A**LL wears from henceforth shall be utterly put down by Thames and Medway, and through all England, but only by the sea coasts.

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## CHAP. XXIV.

*There shall be but one Measure throughout the Realm.*

**O**NE measure of wine shall be through our realm, and one measure of ale, and a measure of corn, that is to say, the quarter of London. And one breadth of dyed cloth, ruffets, &c. that is to say, two yards within the lists. And it shall be of weights as it is of measures.

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## CHAP. XXV.

*In what Case a Præcipe in Capite is not grantable.*

**T**HE writ that is called *Præcipe in Capite*, shall be from henceforth granted to no person of any freehold, whereby any freeman may lose his court.

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## NOTE.

This *Præcipe in Capite* was a writ issuing out of the Court of Chancery, for a tenant holding any manors of the King in chief, as of his crown, and not of him as of any honour or castle, &c. 'Tis now quite out of use.

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## CHAP. XXVI.

*Inquisition of Life and Member.*

**N**OTHING from henceforth shall be given for a writ of inquisition, nor taken of him that prayeth inquisition of life or member, but it shall be granted freely, and not denied.



## C H A P. XXVII.

*Tenure of the King, in Socage, and of another by Knight's Service. Petit Serjeanty.*

**I**F any do hold of us by fee-farm, or by socage, or burgage, and he holdeth lands of another by Knight's service, we will not have the custody of his heir, nor of his land, which is holden of the fee of another, by reason of that fee-farm, socage or burgage. Neither will we have the custody of such fee-farm, socage or burgage, except Knight's service be due unto us out of the same. We will not have the custody of the heir, or of any land, by occasion of any petit serjeanty that any man holdeth of us by service, to pay an arrow, or the like.

## C H A P. XXVIII.

*Wager of Law shall not be without Witnesses.*

**N**O Bailiff, from henceforth, shall put any man to his open law, nor to an oath, upon his own bare saying, without faithful witnesses brought in for the same.

## C H A P. XXIX.

*None shall be condemned without Trial: Justice shall not be sold or deferred.*

**N**O freeman shall be taken or imprisoned, or disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; and we will not pass sentence upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either justice or right.

## N O T E S.

*No freeman shall be taken, &c.* These words deserve to be written in letters of gold, and I have often wondered that they are not inscribed in capitals, in all our Courts of Judicature, Town-Halls, and most



most public edifices; they being so essential to our English freedom and liberties, and because my Lord Coke, in the second part of his *Institutes*, has many excellent observations on this chapter; I shall recite his very words.

*¶* This chapter containeth nine several branches.

1. That no freeman shall be taken, or imprisoned, but by the law of the land, *i. e.* by the common law, or by the statute law; for the liberty of a man's person is more dear to him than any thing, and therefore if he be wronged in that liberty, it is very reasonable he should be relieved.

2. No man shall be disseized, *i. e.* put out of seisin, or be dispossessed of his freehold, *i. e.* of his lands or tenements, or livelihood, or of his liberties, or free customs, which belong to him as his birth-right, unless it be by lawful judgment, *i. e.* by a verdict of his equals, or men of his own condition, or by the law of the land, *i. e.* to speak once for all, by the due course and process of law.

3. No man shall be outlawed, *i. e.* deprived of the benefit of the law, unless he is outlawed according to the course of the law of the land.

4. No man shall be exiled, *i. e.* banished out of his country, unless it be by the same law.

5. No man shall in any sort be destroyed, unless it be by the verdict of his equals, &c.

6. No man shall be condemned at this King's suit, in the Court of King's Bench; for so are the words, *nec supra eum ibimus*, to be understood; nor before any other Commissioner or Judge whatsoever, and that is implied by these words, *nec supra eum mittemus*, but by the judgment of his peers or equals, or according to the law of the land.

7. We shall sell to no man justice or right.

8. We shall deny to no man justice or right.

9. We shall defer to no man justice or right.

Each of these branches we shall briefly explain.

1. No man shall be taken, &c. *i. e.* restrained of his liberty, by petition or suggestion to the King or Council, unless it be by indictment or presentment of good and lawful men, living near the place where such deeds were done.

2. No man shall be disseized, &c. Hereby is intended, that lands, tenements, goods and chattels, shall not be seized into the King's hands, contrary to this great Charter, and the law of the land; nor any man shall be disseized of his lands or tenements, or dispossessed of his goods or chattels, contrary to the law of the land.

A custom was alledged in the town of C. that if the tenant cease by two years, that the Lord should enter into the freehold of the tenant, and hold the same until he were satisfied of the arrearages: It



was adjudged a custom against the law of the land to enter into a man's freehold in that case, without action or answer.

King Henry VI. granted to the corporation of dyers within London, power to search, &c. And if they found any cloth dyed with logwood, that the cloth should be forfeit: And it was adjudged, that this Charter concerning the forfeiture, was against the law of the land and this statute; for no forfeiture can grow by letters patent.

No man ought to be put from his livelihood without answer.

*No man outlawed*, that is, barred to have the benefit of the law. And note, to this word *outlawed*, these words, *unless by the law of the land*, do refer. [*Of his liberties.*] This word hath three significations.

1. As it hath been said, it signifieth the laws of the realm, in which respect this Charter is called *Charta Libertatum*, as aforesaid.

2. It signifieth the freedom the subjects of England have. For example, the company of Merchant-Taylors of England having power, by their charter, to make ordinances, made an ordinance, that every brother of the same society should put the one half of his cloths to be dressed by some cloth-workers free of the same company, upon pain to forfeit 10 s. &c. And it was adjudged, that this ordinance was against law, because it was against the liberty of the subject; for every subject hath freedom to put his cloths to be dressed by whom he will, *et sic de similibus*. And so it is, if such or the like grant had been made by his letters patent.

3. *Liberties* signify the *Franchises* and *Privileges* which the subjects have of the gift of the King, as the goods and chattels of felons, outlaws, and the like; or which the subject claims by prescription, as wreck, waif, stray, and the like.

So likewise, and for the same reason, if a grant be made to any man, to have the sole making of cards, or the sole dealing with any other trade, that grant is against the liberty and freedom of the subject, that before did or lawfully might have used that trade, and consequently against this great Charter.

Generally all *monopolies* are against this great Charter, because they are against the liberty and freedom of the subject, and against the law of the land.

4. *No man exiled*, that is, banished, or forced to depart or stay out of England without his consent. By the law of the land no man can be exiled or banished out of his native country, but either by authority of Parliament, or in case of abjuration for felony by the common law: And so when our books, or any record, speak of exile or banishment, other than in case of abjuration, it is to be intended to be done by authority of Parliament, as Belknap and other Judges, &c. banished into Ireland in the reign of Richard II.

This



This is a beneficial law, and is construed benignly; and therefore the King cannot send any subject of England against his will, to serve him out of this realm, for that should be an exile, and he should *perdere patriam*: No, he cannot be sent against his will into Ireland, to serve the King or his deputy there, because it is out of the realm of England: For if the King might send him out of his realm to any place, then under pretence of service, as Ambassador, or the like, he might send him unto the farthest part of the world, which being an exile, is prohibited by this act.

5. *No man destroyed*, that is, fore-judged of life or limb, or put to torture, or death. Every oppression against law, by colour of any usurped authority, is a kind of destruction; and the words *aliquo modo*, any otherwise, are added to this verb *destroyed*, and to no other verb in this chapter, and therefore all things, by any manner of means tending to destruction, are prohibited; as if a man be accused or indicted of treason or felony, his lands or goods cannot be granted to any, no not so much as by promise, nor any of his lands or goods seized into the King's hands before he is attainted; for when a subject obtaineth a promise of the forfeiture, many times undue means, and more violent prosecution, is used for private lucre, tending to destruction, than the quiet and just proceeding of the law would permit, and the party ought to live of his own until attainer.

6. *By lawful judgment of his peers*, that is, by equals, men of his own rank and condition. The general division of persons, by the law of England, is either one that is noble, and in respect of his nobility of the Lords House of Parliament, or one of the Commons, and in respect thereof, of the House of Commons in Parliament. And as there be divers degrees in Nobility, as Dukes, Marquisses, Earls, Viscounts and Barons, and yet all of them are comprehended under this word *peers*, and are Peers of the realm: So of the Commons, there be Knights, Esquires, gentlemen, citizens and yeomen, and yet all of them Commons of the realm. And as every of the Nobles is one a peer to another, though he be of a several degree; so it is of the Commons, and as it hath been said of men, so doth it hold of noble women, either by birth or marriage.

And forasmuch as this judgment by peers is called *lawful*, it shews the antiquity of this manner of trial: It was the ancient, accustomed, legal course, long before this Charter.

*Or by the law of the land*, that is, by due proofs of law; for so the words are expressly expounded by the statute of 37 Edw. 3, c. 8. And these words are specially to be referred to those foregoing, to which they relate. As none shall be condemned without a lawful trial by his peers, so none shall be taken, imprisoned, or put out of his freehold, without due process of the law, that is, by the indictment or presentment



presentment of good and lawful men of the place, in due manner, or by writ original of the common law.

Now, seeing that no man can be taken, arrested, attached, or imprisoned, but by due process of law, and according to the law of the land, these conclusions hereupon do follow :

1. That the person or persons who commit any, must have lawful authority.

2. It is necessary that the warrant, or *mittimus*, be lawful, and that must be in writing, under his hand and seal.

3. The cause must be contained in the warrant, as for treason, felony, &c. suspicion of treason, or felony, or the like particular crime ; for if it do not thus specify the cause, if the prisoner bring the *Habeas Corpus*, he must be discharged, because no crime appears on the return ; nor is it in such case any offence at all, if the prisoner make his escape ; whereas if the *mittimus* contain the cause, the escape would respectively be treason or felony, though in truth he were not guilty of the first offence. And this mentioning the cause is agreeable to scripture, *Acts v.*

4. The warrant or *mittimus*, containing a lawful cause, ought to have a lawful conclusion, &c. and him safely to keep until he be delivered by law, &c. and not until the party committing shall further order.

If any man, by colour of authority where he hath not any in that particular case, shall presume to arrest or imprison any man, or cause him to be arrested or imprisoned, this is against this act, and it is most hateful, when it is done by countenance of justice. King Edward VI. did incorporate the town of St. Albans, and granted to them to make ordinances, &c. they made a by-law upon pain of imprisonment, and it was adjudged to be against the statute of *Magna Charta* ; so it had been, if such an ordinance had been contained in the patent itself.

*We will sell to no man, deny to no man, &c.* This is spoken in the person of the King, who in judgment of the law, in all his courts of justice, is present : And therefore every subject of this realm, for injury done to him, in person, lands or goods, by any other subject, ecclesiastical or temporal, whatever he be, may take his remedy by the course of the law, and have justice and right for the injury done him, freely, without sale ; fully, without denial ; and speedily, without delay ; for justice must have three qualities, it must be *libera*, free ; for nothing is more odious than justice set to sale : *Plena*, full ; for justice ought not to limp, or be granted by peace-meal : And *celeris*, speedy : *Quia dilatio est quædam negatio*, delay is a kind of denial : And when all these meet, it is both justice and right.

*We will not deny nor delay any man, &c.* These words have been excellently expounded by later acts of Parliament, that by no means common right, or common law, should be disturbed or delayed ; no,



though it be commanded under the great seal, or privy seal, order, writ, letters, message, or commandment whatsoever, from the King, or any other; and that the Justices shall proceed, as if no such writs, letters, order, message, or other commandment, were come to them: All our Judges swear to this; for it is part of their oaths: So that if any should be found wresting the law, to serve a court turn, they are perjured as well as unjust. The common laws of the realm should by no means be delayed, for the law is the surest sanctuary that a man can take, and the strongest fortress to protect the weakest of all; *lex est tutissima cassis*, the law is a most safe head-piece, and *sub clypeo legis nemo decipitur*, no man is deceived whilst the law is his buckler: But the King may stay his own suit, as a *capias pro fine*; for the King may respite his fine, and the like.

All protections that are not legal, which appear not in the register, nor warranted in our books, are expressly against this branch, *nulli differemus*, we will not delay any man: As a protection under the great seal, granted to any man, directed to the Sheriffs, &c. and commanding them that they shall not arrest him, during a certain time, at any other man's suit, which hath words in it, *by our prerogative, which we will not have disputed*: Yet such protections have been argued by the Judges, according to their oath and duty, and adjudged to be void. As Mich. 11 H. 7, Rot. 124, a protection granted to Holmes, a vintner of London, his factors, servants and deputies, &c. resolved to be against law, Pasch. 7, H. 8, Rot. 66, such a protection disallowed, and the Sheriff amerced for not executing the writ, Mich. 13 and 14 Eliz. in Hitchcock's case, and many other of latter time: And there is a notable record of ancient time, in 22 E. 1, John de Marshal's case, *non pertinet ad vicecomitem de protectione regis judicare imo ad curiam*.

*Justice or right.* We shall not sell, deny or delay, justice or right; neither the end, which is justice; nor the mean, whereby we may attain to the end, and that is the law: Right is taken here for law, in the same sense that justice often is so called. 1. Because it is the right line, whereby justice distributive is guided and directed; and therefore all Commissioners of Oyer and Terminer, of goal delivery, of the peace, &c. have this clause, *faciuri quod ad justitiam pertinet, secundum legem et consuetudinem Angliæ*; that is, to do justice and right, according to the rule of the law and custom of England: And that which is called common right in 2 E. 3, is called common law in 14 E. 4, &c. and in this sense it is taken, where it is said, *ita quod stat rectus in curia, id est, legi in curia*.

2. The law is called *rectum*, because it discovereth that which is crooked or wrong; for as right signifieth law, so crooked or wrong signifieth injuries; and *injuria est contra jus*, injury is against right: *Recta linea est index sui et obliqui*, a right line is both declaratory of itself



itself and the oblique. Hereby the crooked cord of that which is called *discretion*, appeareth to be unlawful, unless you take it as it ought to be, *discretio est discernere per legem, quid sit justum*, discretion is to discern by the law what is just.

3. It is called right, because it is the best birth-right the subject hath; for thereby his goods, lands, wife and children, his body, life, honour and estimation, are protected from injury and wrong: *Major hæreditas venit unicuique nostrum a jure et legibus, quam a parentibus*. A greater inheritance descends to us from the laws, than from our progenitors.

Thus far the very words of the oracle of our law, the sage and learned Coke, which so fully and excellently explain this incomparable law, that it will be superfluous to add any thing farther on this chapter.

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### CHAP. XXX.

*Merchants, Strangers, coming into this Realm, shall be well used.*

**A**LL merchants, if they were not openly prohibited before, shall have their safe and sure conduct to depart out of England, to come into England, to tarry in and go through England, as well by land as by sea, to buy and sell without any manner of evil tools, by the old and rightful customs, except in time of war. And if they be of a land making war against us, and be found in our realm at the beginning of the wars, they shall be attached without harm of body and goods, until it be known unto us, or our Chief Justice, how our merchants are treated there in the land making war against us: And if our merchants be well treated there, theirs shall be likewise with us.

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### CHAP. XXXI.

*Tenure of a Barony, coming into the King's Hand by Escheat.*

**I**F any man hold of any escheat as of the honour of Wallingford, Nottingham, Boloin, or of any other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, nor do any other



other service to us, than he should to the Baron, if it were in the Baron's hand: And we in the same wise should hold it as the Baron held it: Neither shall we have, by occasion of any barony or escheats, any escheat, or keeping of any of our men, unless he that held the barony or escheat, otherwise held of us in chief.

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C H A P. XXXII.

*Lands shall not be alienated to the Prejudice of the Lord's Service.*

**N**O freeman, from henceforth, shall give or sell any more of his land, but so, that of the residue of the lands, the Lord may have the services due to him which belong to the fee.

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C H A P. XXXIII.

*Patrons of Abbies shall have the Custody of them in the Time of Vacation.*

**A**LL patrons of abbies who have the King's Charter of England, of advowson, or have old tenure or possession in the same, shall have the custody of them when they fall void, as it hath been accustomed, and as it is before declared.

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C H A P. XXXIV.

*In what Case only a Woman shall have Appeal of Death.*

**N**O man shall be taken or imprisoned upon the appeal of a woman, for the death of any other but her husband.

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C H A P. XXXV.

*At what Time shall be kept a County Court, Sheriff's Turn, and a Leet.*

**N**O county court, from henceforth, shall be holden but from month to month; and where greater time hath been used, there shall be greater. Nor shall any



any Sheriff, or his Bailiff, keep his turn in the hundred, but twice in the year; and nowhere but in the due place, and accustomed, that is to say, once after Easter, and again after the feast of St. Michael. And the view of frank-pledge shall be likewise at the feast of St. Michael without occasion, so that every man shall have his liberties which he had, or used to have, in the time of King Henry our grandfather, or which he hath purchased since. The view of frank-pledge shall be done, that our peace may be kept, and that the tything be wholly kept as it hath been accustomed, and that the Sheriff seek not occasions, and that he be content with so much as the Sheriff was wont to have for his view-making, in the time of King Henry our grandfather.

## N O T E S.

Before the courts at Westminster were erected, the county courts were the chief of this kingdom; in which courts the Bishop and an Alderman did sit, the one to judge according to the ecclesiastical law, and the other according to the common law. This was the foundation of the united power of the Bishop and Earl, to sit and try causes in one court; the conjunction of which powers mutually to assist each other, is as ancient as the English government itself; but these powers were separated by William called the Conqueror, and afterwards all spiritual causes were brought into the ecclesiastical courts, and the law business into the courts at Westminster.

But during all the Norman reign, most causes were tried in the county courts, which were held, as they are now, every month by the Sheriff; and he likewise held his turn twice in every year, viz. a month after Easter, and Michaelmas: The county court is a court of record in all things proper to its jurisdiction, and 'tis the King's leet throughout the county, though the Sheriff is judge of it; and therefore none are now exempted from appearing at this court, but the Lords spiritual and temporal, and the clergymen and women; and the reason is because all other persons above the age of 12 years were bound to take the oaths of allegiance in this court.

*The view of frank-pledge shall be so done, that our peace may be kept, &c.* Now for the better understanding that paragraph, 'tis to be known, that every man in this kingdom, except Peers, the Clergy, and Knights, and their eldest sons, were formerly associated in a decennary, i. e. in a company of ten families, who were pledged or bound



bound for each other to keep the peace, and to observe the laws; and if any crime was done by one of them, in such case the other nine were to make satisfaction, if the criminal fled from justice; but they had thirty days allowed to apprehend him, and if he was not taken within that time, then, and not before, the other nine pledges gave satisfaction for the offence done. This custom was so strictly observed both before and after the conquest, that the Sheriffs at every county court did take the oaths of those who were above fourteen years of age, that they were settled in some decennary; whereupon this branch of the Sheriff's authority was called the view of frankpledge.

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### C H A P. XXXVI.

*No Land shall be given in Mortmain.*

**I**T shall not be lawful from henceforth for any one to give his lands to any religious house, and to take the same land again, to hold of the same house. Nor shall it be lawful for any house of religion to take the lands of one, and to lease the same to him of whom he received it: If any from henceforth give his lands to any religious house, and thereupon be convicted, the gift shall be utterly void, and the land shall accrue to the Lord of the fee.

### N O T E.

*Lands shall not be given in mortmain, i. e. into a dead hand; for when they were given to a religious house, they were different from all other hereditaments whatsoever; they were never to revert to the donor, or his heirs, nor were subject to any temporal use; so that the services which were formerly due for such lands, were by this gift utterly extinct, and therefore such gifts were now prohibited without licence of the King or Chief Lord.*

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### C H A P. XXXVII.

*A Subsidy in respect of this Charter, and the Charter of the Forest, granted to the King.*

**E**SCUAGE from henceforth shall be taken like as it was wont to be in the time of King Henry our grandfather, reserving to all Archbishops, Bishops, Abbots,



Abbots, &c. Earls, Barons, and all persons, as well spiritual as temporal, all their free liberties, free customs which they have had in time past, and all these customs and liberties aforesaid, which we have granted to be holden within this our realm, as much as appertaineth to us, and our heirs, we shall observe, and all men of this our realm, as well spiritual as temporal, as much as in them is, shall observe the same against all persons in like wise: And for this our gift and grant of these liberties, and of others contained in our Charter of our Liberties of Forest, the Archbishops, Bishops, Earls, Barons, Knights, freeholders, and other our subjects, have given unto us the fifteenth part of all their moveables. And we have granted to them on the other part, that neither we nor our heirs shall procure or do any thing, whereby the liberties in this Charter contained shall be infringed or broken. And if any thing be procured contrary to the same, it shall be had of no force or effect.

We, ratifying and approving these gifts and grants aforesaid, confirm and make strong all the same for us and our heirs perpetually; and by the tenor of these presents do renew the same, willing and granting for us and our heirs, that this Charter, and all and singular its articles for ever, shall be stedfastly, firmly and inviolably observed. And if any article in the same Charter contained, yet hitherto peradventure hath not been kept, we will, and by our authority royal, command, from henceforth, firmly they be observed. In witness whereof we have caused these our letters patent to be made. T. Edward our son at Westminster, the twenty-eighth day of March, in the twenty-eighth year of our reign.



## N O T E.

*Escuage, i. e.* the service of the shield: The tenant holding by this tenure, was bound to follow the King to the wars at his own charge, and if he did not, and provided no other in his place, then he was to pay a sum of money, which was called a *reasonable aid* to the Lord; and this sum or duty being uncertain, therefore the King granted, that no more should be taken than was wont in the time of his grandfather: But this is now taken away by the statute 12 Car. 2, cap. 24, by which all tenures by Knight's service, &c. and the *fruits and consequences thereof*, of which escuage was one, are discharged.

## The CHARTER of the FOREST.

**T**HIS Charter was likewise confirmed in the same year with *Magna Charta*, viz. anno. 9 H. 3; for before that time the people were grievously oppressed, by making forests; for as by law the King might enter on the lands of his subjects where *mines of gold or silver* were found, so he claimed a privilege to keep wild beasts and game to himself in any place which he should appoint for that purpose.

Canutus the Dane, who was King here anno. 1018, prohibited all people to enter his forests, *ubicunque eas habere voluero, i. e.* wherever he pleased to make such forests: And in after-ages, when any King intended to do the like, a commission issued out of the Court of Chancery, under the great seal, directed to certain persons, declaring his will and pleasure to make a forest in such a place, commanding them to view the ground, and to bound so much thereof, which they should think convenient to make a forest for his delight and recreation; and by virtue of this commission, those persons entered on the lands of any man whatsoever, and set out marks and boundaries, in order to make a forest, without any satisfaction to the owner: And when they had made their perambulation, and viewed the ground, and bounded it, and after they had returned their commission into the chancery, then the King was entitled

to



to those lands, now converted into forest, and that by matter of record. Now this being a great oppression, therefore by the first paragragh of the Charter of the Forest 'tis thus declared.

CHAP. I.

ALL forests which King Henry our grandfather afforested and made, shall be viewed by good and lawful men ; and if he hath made a forest of any other wood, more than of his own *demesne*, whereby the owner of the wood hath hurt, we will that forthwith it be disforested. And if he hath made forest of no man's wood but his own, then we will that it remain forest still, saving the common of herbage, and of other things in the same forest to them, which before were accustomed to have the same.

NOTES.

All the Norman Kings not only inclosed forests in the manner as before mentioned, but punished those who hunted, and killed any of the game, with the greatest severity.

John Brampton, who was Abbot of *Joreval*, in *Yorkshire*, in the reign of Ed. 2, procured an ancient chronicle, which he gave to that abbey, beginning with the coming in of St. Augustin, anno. 588, and ending with the death of H. 1, in which he tells us that William, called the Conqueror, caused the eyes of the man to be pulled out, who took either a buck or doe in his forest.

Henry Knighton, one of the Canons of Leicester, who lived some time after Brampton, and made a history of England, beginning at the conquest, and ending about the latter end of the reign of Ric. 2, tells us, that William Rufus would hang a man for taking a doe out of any of his forests, and that he made one pay 20 s. for killing a hare, and another 10 s. for killing a coney in his forest.

Eadmerus, a Monk of Canterbury, who lived in the twelfth century, long before either of the before mentioned historians, and who wrote the lives of the two Williams, and Henry the first (being a work of unquestionable authority) tells us, in lib. 2, fol. 48, that the same Rufus caused fifty rich men to be apprehended, and accused them for killing and taking his bucks in his forest; which they denying, they were ordered to clear themselves by fire ordeal: And H. 1 made no difference between one who killed a man and a buck, and punished those



those who destroyed the game, though not in his forests, either by forfeiture of their goods, or loss of their limbs; but H. 2 made it imprisonment for a time.

His son, H. 1, revived the old laws for punishing those who were convicted for hunting in his forests, viz. *that they should be gelt, and have their eyes put out*; but that King afterwards thought this punishment to be very severe, and therefore he appointed that such convicts should abjure the realm, or be committed, or pay a fine.

Edw. 1 appointed the same punishment, but that the offender should be free both of life and limb.

The historians of those times tell us, that *new forest* in Hampshire was raised by the destruction of twenty-two parish churches, and many chapels, villages and manors, for the space of thirty miles; which was so displeasing to God, that several of those Princes came to untimely ends, in that very forest; and particularly that Rufus himself was shot there by one Tyrrell, and that before him, Rich. the brother of H. 1, was killed there by a soldier, and Henry, who was nephew of Robert, the eldest son of the Conqueror, was hanged like Absalom in the boughs of that forest.

Besides this *new forest*, there were sixty-eight more at that time in England, in most of which those orders or laws aforesaid were executed with great severity: This made the people stand up for their liberties, which they recovered by the grant of this Charter.

By the first article of the Charter of the Forest, it appeareth, that if the King had made a forest of his own lands, and not of any of his subjects, then the same should remain a forest still; but with a saving of the common herbage to them who were accustomed to have it before it was a forest: So that though it continued a forest, yet no man was prejudiced to have common there, who had a right before, but the same is reserved as it was at common law.

## CHAP. II.

**M**EN that dwell out of the forest, from henceforth shall not come before Justices of our forest by common summons, unless they be impleaded there, or be sureties for some other that were attached for the forest.

## NOTES.

Before the making this Charter, all the inhabitants of that county wherein the King had any forest, were bound to appear before the Chief



Chief Justice in Eyre, or his deputy, at a Court called the Justice Seat, upon a *general summons*, i. e. all those who had lands or tenements within the boundaries of the forest, or those who claimed any liberties or franchises, or free customs, therein.

And this *general summons* was only a precept directed by the *Chief Justice in Eyre* to the Sheriff of the county, commanding him to summon the Lords spiritual and temporal, and the Knights of the shire, tenants, &c. and that he should make proclamation throughout the county, both in fairs and markets, and all other public places, that all persons claiming any liberties within the forest, should appear there at a certain day, to shew what manner of liberties they claimed.

This was called the general summons; but it being found very inconvenient for those who lived out of the forest to appear at this Court upon such a general summons, therefore it was remedied by this statute.

But the chief reason of this Charter was, that King H. 2, having converted the lands and woods of several of his subjects into forests, to which he had no manner of title, and those lands, &c. being afterwards restored to the right owners, or their heirs, and quite disforested; therefore it was provided by this Charter, that the owners of such lands, who formerly had lived within the forest, might not appear at the Justice Seat, now their lands were no longer any part of the forest; but all persons who had any thing to do within the forest, as well spiritual as temporal, were bound to appear upon this general summons: And for not appearing, &c. the Abbot of Westminster was amerced, and so was one Jeffery Lucy, a great Lord.

### CHAP. III.

**A**LL woods which have been made forest by King Richard our uncle, unto our first coronation, shall be forthwith disforested, unless it be our demesne woods.

### NOTES.

Though the lands and woods of several people were converted and made parts of forests without their consent, yet the freehold remained in them still; but the lands were subject to the laws of the forest: So that a man could not sell timber growing on his own lands, when once they were taken into a forest, without view of the Forester, and a licence from the Chief Justice in Eyre; for in such cases, the King had a prerogative over the woods of every man within the forest, in order to preserve the game, which cannot be done without woods and coverts



to defend them; and therefore they may not be felled, without the leave of the Chief Justice in Eyre.

But by this grant or Charter, all the woods which were taken into forest, from the beginning of the reign of King Richard 1, to the time of the coronation of this King, were restored to the owners.

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#### CHAP. IV.

**A**LL Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, and other our freeholders, which have their woods in forests, shall have their woods as they had them at the time of the first coronation of King Henry our grandfather; so that they shall be quit for ever, of all *purprestures*, *wastes* and *assarts*, made in those woods after that time, until the beginning of the second year of our coronation; and those that do from henceforth make *purprestures* without special licence, or waste and *assart*, the same shall answer unto us for the same wastes, *purprestures*, and *assarts*.

#### NOTE.

Upon the restoring of all woods taken into forests, to the right owners, the King likewise in this chapter granted, that they should be quit of all *purprestures*, *wastes*, and *assarts*, made in those woods, *i. e.* if any of them had encroached on the crown lands, which lay contiguous to those woods, and enclosed the same, and laid them to their own use, this is a *purpresture*, and fineable at the discretion of the Chief Justice in Eyre; or if any of them had felled any woods, or thick coverts, without licence, &c. this by the forest law is *waste*: Or if any of them had grubbed up any woods or coverts by the roots, and converted the land into tillage, this is called *assart* of the forest; for though the woods were restored to the lawful proprietors, yet they were liable to be punished for all or any of those offences which were committed, whilst they remained part of the forest; if it had not been for this Charter.

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#### CHAP. V.

**O**UR Regarders shall go through the forest to make their regard, as it hath been accustomed at the time of the first coronation of King Henry our grandfather, and no otherwise.

NOTES.



N O T E S.

A *Regarder* is an officer in the forest, made either by a grant from the King, or the Chief Justice in Eyre. In every forest there are twelve in number, and their business is to view and enquire into all offences done in the forest, either by the Foresters, or any other person whatsoever, and to write the same fairly on a roll, and bring it to the *Swainmote-Court*, certified under their hands and seals, &c.

This they ought to do once in three years, and not ofner; but if they went through the forest every year, and made their presentments, though the same were void, yet the party could not discharge himself but by plea, which was chargeable and troublesome to him.

Therefore by this Charter it was appointed, that they should make their regard as it had been accustomed at the coronation of King H. 2, and that was but once in three years; and then it was to be made but only within the boundaries of the forests, which was not observed before the making this Charter.

C H A P. VI.

**T**H E enquiry or view for lawing of dogs being within our forest, shall be made from henceforth when the regard is made, that is to say, every year; and then it shall be done by the view and testimony of honest men, and not otherwise; and he whose dog is not then found expeditated, shall be amerced, and shall pay for the same three shillings; and from henceforth no ox shall be taken for lawing of dogs, and such lawing shall be done by the assize commonly used, that is to say, that three claws of the fore feet shall be cut off by the skin: But from henceforth such lawing of dogs shall not be done, but in the places where it hath been accustomed, from the time of the first coronation of the said King Henry our grandfather.

N O T E S.

By the first and third chapters of this Charter, all woods of other men which had been taken into the forests against their consent, either by King H. 2, or R. 1, were to be viewed by good and lawful men, and restored to the right proprietors; and though the inheritance still continued in them after such woods were made part of the forests,



forests, yet, as it hath been observed, they were subject to the laws of the forest, of which *expeditating dogs* was one, *i. e.* every man who dwelt in the forest, was to cut off three claws of the fore feet of his dog next to the skin, that he might be disabled to hurt the deer; and not the ball of the fore feet, as formerly; and if this was not done, then upon an inquisition taken by the *Regarders*, and certified by them who it was that owned the dog, and presented upon oath to the *Verderers*, the Court in such case issued process against him, to levy three shillings for his neglect in not cutting off his dog's claws.

Now all the new forests which were made by H. 2, R. 1, or King John, being by this Charter to be disforested, therefore it was necessary to exempt the proprietors of those lands which were once part of the forest from this forfeiture, which was done by these words, *viz. from henceforth no dogs shall be expeditated, but in the places where it hath been accustomed*, from the time of the first coronation of the said King H. our grandfather, *i. e.* in the ancient forests, and which remain so still, after the lands of the new forests were disforested, and restored to the right owners.

#### CHAP. VII.

**N**O Forester or Beadle from henceforth shall make scotal, or gather garb or oats, or any corn, or lamb or pigs, nor shall make any gathering, but upon the sight and upon the oath of the twelve *Regarders*, when they shall make regard. So many Foresters shall be assigned to the keeping the forests, as reasonably shall seem sufficient for keeping the same.

#### NOTES.

Before the making this Charter it was a general complaint, that the officers of the forest did very much oppress the people who dwelt there, or who had any land adjoining; and this was by extortion, and by a multitude of unnecessary officers, by whom the same were exacted.

Now as the mischief was two-fold, so was the remedy, *viz.* the first is a general prohibition by this chapter, for avoiding all manner of extortion; the second is likewise a prohibition to avoid all surcharging the forests with too many Foresters and Walkers, and other under officers, so that there should be no more than what were sufficient to look after the wild beasts; and by diminishing the number of such officers, their extortion would of consequence be diminished.

Now



Now the extortions which were committed by those officers were by scotal, *i. e.* by keeping ale-houses in the forest, and causing men to come thither to spend their money, for fear of their displeasure; this was an offence, to be enquired into at the Swainmote, and at the General Sessions of the forest, by a jury of twelve men; and the Forester who was convicted of such offence was to be fined, and put out of his office.

So if a Forester, or any other officer of the forest, by colour of his office, did oppose those who had any right of coming there, by compelling them in a clandestine manner to give him hay, oats, or any other corn, or lambs, or pigs, or make any manner of collection of money or other thing, that they might enjoy their common quietly, this is extortion, and prohibited by this Charter.

It is likewise to be observed, that before this Charter, the Foresters, and all other persons who had bailiwicks in fee, did appoint more Walkers and under-keepers than were necessary; so that the people were oppressed by the extortions of a multitude of officers, of which there was no manner of occasion; and these were executed by them in the forests for the maintenance of their families, they having no wages, nor any subsistence, but what they got by extortion; therefore 'tis provided by this chapter, that there shall be no more Foresters than what shall be reasonably sufficient for keeping the forest, *i. e.* no more than the Regarders shall think convenient when they make their regard; for if they find there are more than are necessary, or more than have been accustomed in ancient times, then upon their presentment hereof before the Justices of the forest, they shall be removed, and the offenders shall be fined and imprisoned.

So that the number of the Foresters, and other officers of the forest, is to be established by the discretion and oath of the Regarders, and that must be according to the quantity of the ground in the forest; for if there are several walks and bailiwicks, there ought to be one Forester at least in every walk.

#### CHAP. VIII.

**N**O Swainmote from henceforth shall be kept within this realm but twice in the year; first, the 15th day before St. Michael, when our Gest-takers of our woods come together to take agestment in our demesne woods, and about the feast of St. Martin in the winter, when that our Gest-takers shall receive our pannage; and to these two Swainmotes shall come our Foresters, Verderers, Gest-takers, and none other, by distress. The third



third Swainmote shall be kept at the beginning of fifteen days before the feast of St. John the Baptist, when that our Gest-takers do meet to fawn our deer; and at this Swainmote shall meet our Foresters and Verderers, and none other, by distress. Moreover, every forty days, throughout the year, our Foresters and Verderers shall meet to see the attachments of the forest, as well for green hue as for hunting, by the presentment of the Foresters, and before them attached; and the said Swainmotes shall not be kept, but within the counties in which they have been used to be kept.

#### N O T E S.

Swainmote, or Swanimote, is a Court as incident to a forest, as a Court of Piepowders to a fair; and it is so called, because the swains, *i. e.* the freeholders of lands in the forest, met at this Court, to which they all owed suit and service.

Before the making this Charter, there was no certain time limited for holding this Court, and therefore the Chief Wardens and Foresters kept such Courts as often as they pleased, and compelled those who dwelt within the forest to attend, till at last this became another great oppression; for those Courts were so frequently kept, that the people could not constantly attend, and thereupon several fees were exacted from them to excuse their appearance.

To remedy which oppression, it was provided by this Charter, that this Court should be held but thrice in a year, viz. once in the beginning of fifteen days before the feast of St. John the Baptist; and this time was once appointed, because care might be taken throughout the forest to preserve the wild beasts in the time of fawning, which is usually fifteen days before midsummer, and fifteen days after; and this is called the fence-month; and about this time also the Agestors do begin to take in all commonable cattle into the forests, to eat the herbage in the King's own woods or lands, and this continueth till Holy-Rood day, which is fifteen days before Michaelmas, and then the next Court of Swainmote is to be held; at which Court the Agestors are to receive the money due for the herbage in the presence of the Foresters and Verderers, that they may record it in their rolls.

And at this Court the Agestors take in cattle not commonable, and those are to feed on the mast, as hogs, &c. And at the next Court afterwards, which is held on the feast of St. Martin, then they receive

the



the money for the same, in manner as before mentioned for the herbage, and this is called pannage.

Now notwithstanding the negative words in this chapter, viz. that the Foresters and Verderers, and none other, shall be compelled to attend these Courts, yet by the stat. 1 Ed. 3, cap. 8, it appears that the freeholders and other good and lawful men of the forest shall appear at these Courts, to make inquests and juries; and the Woodwards and other officers of the forest must likewise attend, and shall be amerced if they do not; which ameracements must be estrated to the chief Warden of the forest, that the same may be levied by distress.

By this chapter 'tis provided, that every forty days the Foresters and Verderers shall meet to see the attachments of the forest, as well for green hue as for hunting by the presentment of the Foresters, and before them attached; and by this means another oppression was prevented, for before the making this Charter there was no time limited for holding this Court, viz. the Court of Attachments, which formerly was called the Woodmote, and since that time the Forty Days Court; but the same was held very often, and at the will and pleasure of the chief officers of the forest.

To this Court the Foresters brought their Attachments, *i. e.* what offenders they had attached, either by their goods or chattels, or by their bodies, for committing any hurt or injury in the green hue, otherwise called vert, *i. e.* every tree growing in the forest, and bearing green leaves, which may cover or feed the deer; and for this reason it is called the Court of Attachments.

This was only a Court of Inquest, and the Verderers, who were Judges thereof, could not intermeddle with any thing but what was injurious to the vert or venison, and the Foresters were to bring in their attachments, as well of the one as the other, which the Verderers were to receive and inroll.

#### CHAP. IX.

EVERY freeman may take agestments in his own woods within our forests, at his pleasure, and shall take his pannage; and also we do grant, that every freeman may drive his swine freely, and without impediment, through our demesne woods, for to agest them in their own woods, or else where they will; and if their swine tarry one night, and lie within our forest, there shall be no occasion taken thereof, whereby he may leese any of his own.



## N O T E.

He who had woods or lands within the forest, either in his own right or the right of his wife, might by himself or servants, or tenants, agest the same, which he could not do before the making this Charter; and afterwards he could not agest goats or sheep there, though they were his own, without a special licence for that purpose; because the goats tainted all the herbage where they fed; so that the beasts of the forest would not depasture there; and sheep eat it so near the earth, that they left little or nothing for the deer in those places where they depastured.

## CHAP. X.

**N**O man from henceforth shall lose neither life nor member, for killing our deer; but if any man be taken therewith, and convict for taking our venison, he shall make grievous fine, if he hath any thing whereof to make fine; and if he hath nothing to leese, he shall be imprisoned a year and a day; and after the year and day is expired, if he can find sureties, he shall be delivered, and if not, he shall abjure the realm.

## N O T E.

Before the making of this Charter there was no certain law to punish those who hunted and killed any deer in the King's forests, but such offenders were punished in such manner as the King thought fit, which was by loss of eyes or limbs, and sometimes by death; for so it was in the time of Ed. the Confessor, and many years afterwards, and these punishments were inflicted with the greatest severity: But this was taken away by this Charter, and the criminal was then to be fined after conviction, but in a grievous manner; and if he could not pay the fine, he was to be committed to prison for a year and a day, and after the expiration of that term, if he could not give security never to offend in the like case, he was then to abjure the realm, *i. e.* he was to swear to depart the kingdom for ever.

## CHAP. XI.

**W**HATSOEVER Archbishop, Bishop, Earl, or Baron, coming to us at our commandment, passeth by our forest, it shall be lawful for him to take and kill one or two of our deer, by the view of our Forrester,



rester, if he be present; or else he shall cause one to blow a horn for him, that he seem not to steal our deer. And likewise they shall do in returning home from us.

CHAP. XII.

EVERY freeman from henceforth, without danger, shall make, in his own woods, or in his lands, or in his water which he hath within our forest, mills, springs, pools, marl-pits, dikes, or arable ground, without inclosing the arable land, so that it be not to the annoyance of his neighbours.

CHAP. XIII.

EVERY freeman shall have within his own woods, airies of hawks, sparrow-hawks, falcons, eagles and herons, and shall have also the honey that is found in his woods.

NOTES.

*Every freeman from henceforth, &c.* which words import, that before that time he could not erect any mill, &c. in his own grounds within the forest, and without leave; for if he did, it was a purperture, and the offender was to be committed without bail, till he paid a fine to the King.

And as for hawks and falcons, &c. the King claimed them by virtue of his prerogative, though they were bred in another man's woods.

CHAP. XIV.

NO Forester from henceforth, which is not a Forester in fee, paying to us farm for his bailiwick, shall take chiminage: But a Forester in fee, paying to us farm for his bailiwick, shall take chiminage, viz. for carriage by cart, the half year twopence, and for another half year twopence; for an horse that beareth loads, for an half year an halfpenny, and for another half year an halfpenny, and but of those only who come as merchants through his bailiwick, by his licence to buy bushes, timber,



timber, bark, coal, and in another place to sell it again where they will, at their pleasure; but for no other carriage by cart, chiminage shall be taken. Those who bear on their backs brush, bark or coal, to sell, though it be their living, shall pay no chiminage to our Foresters, except they take it within our demesne woods.

#### N O T E S.

The Foresters, before the making of this Charter, did frequently oppress the people passing through the forests, by exacting toll from them for carts or horses carrying any burthens, which was called chiminage; and they likewise exacted another toll from every traveller through the forest, either on foot or horseback, and this was called pedage.

This was remedied by this Charter, so that those who were only Foresters during pleasure, or for life, could take no such toll, but only those who were Foresters in fee, and farmed their bailiwicks of the King; and they were likewise limited to take but a halfpenny for the half year in summer, and twopence for the winter half year, and not of all who travelled through the forests with loaded carts and horses, but only of such who come to buy timber or bark to sell again; and they were to take nothing of the poorer sort of people, who were not able to keep horses, but carried the bark and coals on their backs, though it was to sell again, unless it was taken within the King's own demesnes.

#### C H A P. XV.

**A**LL that be outlawed of trespass within our forest, since the time of King Henry our grandfather, unto the first year of our coronation, shall come to our peace without let; and shall find to us sureties, that from henceforth they shall not trespass unto us within our forest.

#### N O T E S.

If a man was indicted for any offence done within the forest, who lived in another county, and could not be taken by the Foresters, he was usually outlawed; in which the proceedings were the same as at common law; and by virtue of such outlawry, his goods and chattels were forfeited to the King, and likewise the profits of his lands.

And if he was outlawed for an offence, either in destroying the green hue, or in killing the deer, and afterwards taken upon the *capias*



*pias utlegatum*, he was to be committed without bail, and to remain in prison till delivered by special warrant from the King, or from the Chief Justice in Eyre, or Chief Warden of the forest.

But now by this Charter, all those who had been convicted by outlawry were pardoned, and restored to their goods and liberties, upon giving security not to offend in the like nature again.

C H A P. XVI.

**N**O Constable, Castellain or Bailiff, shall hold plea of the forest, neither for green hue nor hunting; but every Forester in fee shall make attachments for pleas of the forest, as well for green hue as hunting; and shall present the same to the Verderers of the provinces; and when they be inrolled and inclosed under the seals of the Verderers, they shall be presented to our Chief Justices of our forest, when they shall come thither to hold plea of forest, and before them they shall be determined.

N O T E S.

Castellain was a certain officer who had a command over all, or some part of the forest, and before the making this Charter he and the Constable and Bailiff would attach those who committed any trespass in the forest, either in the vert or in hunting; but it was prohibited for the time to come, and that none should make such attachments but a Forester in fee, who was a known and constant officer of the forest, and responsible to the party grieved, if he should misbehave himself: And his business is to attach offenders, either by their goods, or in some cases by their persons: But if the party enter into a recognizance to appear at the next Forest Court, taken before the Verderers, because they are Judges of record, and they are to receive the attachments from the Foresters, and to inroll them in their rolls, which they are to certify to the Chief Justices of the forest, at their next general sessions or eyre.

Upon the whole matter, it will appear upon a recapitulation of this Charter, that the people of England recovered by it as many and as great privileges and liberties, as they did by *Magna Charta*.

For before this time the Kings of England claimed a prerogative to make forests of the lands of any of his subjects; so that no man could say his estate in those lands was his own; and when they were converted into forests, those who hunted there were punished with the greatest



greatest severity, even to the loss of limbs and life, and sometimes by imprisonment, and at other times by abjuring the realm for ever, and the mildest punishment was a grievous fine.

'Tis true, though these lands were made forest, the inheritance continued still in the proprietors, but that signified very little; for they being subject to the laws of the forest, the owners could make no profit of them; for they could not sell any timber, even for the necessary repairs of their houses, without a licence from the Chief Justice in Eyre, which could not be obtained without expence and trouble, and sometimes not at all: They could not take in agestments, nor plough their lands, and sow them with corn; but they must lie open to the deer, *i. e.* they might inclose them with a low hedge, so that the deer might easily get in.

And as there were many new forests made, so there were many courts erected, and made peculiar to such places; which courts were kept oftener than at first they were appointed to be kept, and the people were compelled to attend upon a general summons, or to be amerced if they neglected.

There were likewise many oppressions and extortions made by a multitude of officers, who were to take care of those forests; for the Regarders would make their presentments every year, which they ought to do but once in three years, and though such presentments were void, yet the party must be at expence to discharge himself by plea.

Then no man could keep a dog near the forest, without cutting off three of the claws of the fore feet, under the penalty of being amerced 3 s. every third year. The Foresters likewise kept ale-houses in the forests, and compelled the people to come there to spend money, for fear of their displeasure; and no man could enjoy his common quietly, without making them presents of lambs, or pigs, or corn, or hay; and they exacted toll, not only of those who came with carts and horses loaded, but generally of every man who travelled through the forests.

Then if any trespass was done in the forest, and the offender could not be taken, he was prosecuted to the outlawry; and if he was afterwards taken upon that process, he was sure to be committed to prison, there to remain without bail, and never to be released, but by a special warrant from the King, or Chief Justice in Eyre; all which was remedied by a grant of this Charter.



*A Confirmation of the CHARTERS of the LIBERTIES of ENGLAND, and of the FOREST, made in the 35th Year of Edward I.*

## C H A P. I.

**E**DWARD, by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all those these present letters shall hear or see, greeting. Know ye, that we, to the honour of God, and of holy church, and to the profit of our realm, have granted for us and our heirs, that the Charter of Liberties, and Charter of the Forest, which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach. And we will, that the same Charter shall be sent under our seal as well to our Justices of the Forest as to others, and to all Sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs, in the which it shall be contained, that we cause the aforesaid Charters to be published, and to declare to the people that we have confirmed them in all points, and that our Justices, Sheriffs, Mayors and other ministers, which under us have the laws of our land to guide, shall allow the same Charters pleaded before them in judgment in all their points, that is to wit, the *Great Charter* as the common law, and the Charter of the Forest for the wealth of the realm.

## C H A P. II.

**A**ND we will, that if any judgment be given from henceforth, contrary to the points of the Charters aforesaid, by the Justices, or by any other our ministers that hold plea before them, against the points of the Charters, it shall be undone, and holden for nought.



## C H A P. III.

**A**ND we will that the same Charters shall be sent under our seal to the cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

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## C H A P. IV.

**A**ND that all Archbishops and Bishops shall pronounce the sentence of excommunication against all those that by word or deed, or counsel, do contrary to the aforesaid Charters, or that in any point break or undo them; and that the said curses be twice a year denounced and published by the Prelates aforesaid; and if the same Prelates or any of them be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York, for the time being, shall compel and distrain them to the execution of their duties, in form aforesaid.

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## C H A P. V.

**A**ND forasmuch as divers people of our realm are in fear that the aids and taxes, which they have given us before time towards our wars, and other businesses, of their own grant or good will, however they were made, might turn to bondage to them and their heirs, because they might be at another time found in the rolls, and likewise for the prices taken throughout the realm by our ministers; we have granted for us and our heirs, that we shall not draw no such aids, tasks nor prices, into a custom, for any that hath been done heretofore, be it by roll, or any other precedent that may be founden.

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## C H A P. VI.

**M**OREOVER, we have granted for us and our heirs, as well to Archbishops, Bishops, Abbots, Priors, and other folk of holy church, as also to Earls, Barons,



Barons, and to all the commonalty of the land, that for no business from henceforth, we shall take such manner of aids, tasks or prices, but by the common assent of the realm, and for the common profit thereof; saving the ancient aids and prices due and accustomed.

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## C H A P. VII.

**A**ND forasmuch as the most part of the commonalty of the realm find themselves sore aggrieved with the maletot of wools, that is, to wit, a toll of forty shillings for every sack of wool; and have made petition to us to release the same: We, at their request, have clearly released it; and have granted for us and our heirs, that we shall not take such things, without their common consent and good will, saving to us and our heirs the custom of wools, skins and leather, granted before by the commonalty aforesaid. In witness of which things, we have caused our letters to be patent. Witness Edward our son, at London, the tenth of October, and the twenty-fifth year of our reign.

*Sententia lata super Chartas.*

*The Sentence of the Clergy, against the Breakers of the Articles above written.*

**I**N the name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King, to the honour of God, and of holy church, and for the common profit of the realm, hath granted, for him and his heirs for ever, these articles above written; Robert Archbishop of Canterbury, Primate of all England, admonisheth all his province, once, twice, and thrice; because that shortness will not suffer so much delay, as to give knowledge to all the people of England of these presents in writing. We therefore enjoin all persons, of what estate soever they be, that they and

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every



every of them, as much as in them is, shall uphold and maintain these articles granted by our sovereign Lord the King, in all points. And all those that in any point do resist or break, or in any manner hereafter procure, counsel, or any ways assent to resist or break those ordinances, or go about it, by word or deed, openly or privily, by any manner of pretence or colour; we the aforesaid Archbishop, by our authority in this writing expressed, do excommunicate and accurse, and from the body of our Lord Jesus Christ, and from all the company of heaven, and from all the sacraments of holy church, do sequester and exclude.

N O T E.

It may be observed, that this curse is left out of our late printed statute book, though inserted at large in that printed in three volumes, in Queen Elizabeth's days, anno. 1557. There is likewise another like dreadful, but more full and express curse, solemnly pronounced before in the time of King Henry III. which being also omitted in our modern statute book, I shall add here for the reader's satisfaction.

*The Sentence, or Curse, given by the Bishops, against the Breakers of the Great Charter, and the Charter of the Forest.*

**I**N the year of our Lord one thousand two hundred and fifty-three, the third day of May, in the great hall of the King at Westminster, in the presence and by the assent of the Lord Henry, by the grace of God, King of England, and the Lord Richard Earl of Cornwall, his brother; Roger Bigot, Earl of Norfolk and Suffolk, Marshal of England; Humphry Earl of Hereford, Henry Earl of Oxford, John Earl of Warren, and other estates of the realm of England; William Boniface, by the mercy of God, Archbishop of Canterbury, Primate of England; F. of London, H. of Ely,



Ely, S. of Worcester, E. of Lincoln, W. of Norwich, G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of St. David's; Bishops, apparelled in pontificals; with tapers burning, against the breakers of the church's liberties, and of the liberties or other customs of the realm of England, and namely of these, which are contained in the Charter of the common liberties of England, and Charter of the Forest, have denounced the sentence of excommunication in this form: By the authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the glorious Mother of God, and perpetual Virgin Mary, of the blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs, of blessed Edward King of England, and of all the Saints of heaven: We excommunicate, accurse, and from the benefits of our holy mother the church we sequester, all those that hereafter willingly and maliciously deprive or spoil the church of her right; and all those that by any craft or williness do violate, break, diminish, or change the church's liberties, and free customs, contained in the Charters of the common liberties, and of the Forest, granted by our Lord the King, to Archbishops, Bishops, and other Prelates of England; and likewise to the Earls, Barons, Knights, and other freeholders of the realm; and all that secretly or openly, by deed, word, or counsel, *do make statutes*, or observe them being made, and that bring in customs, or keep them when they be brought in, against the said liberties, or any of them, the writers, the law-makers, counsellors, and the executioners of them, and all those that shall presume to judge against them. And every which persons before mentioned, that wittingly shall commit any of the premises, let them well know, that they incur the afore said sentence, *ipso facto*. And those



those that commit aught ignorantly, and be admonished, except they reform themselves within fifteen days after the time of their admonition, and make full satisfaction for that they have done, at the will of the ordinary, shall be from that time forth wrapped in the said sentence; and with the same sentence we burthen all those that presume to disturb the peace of our sovereign Lord the King, and of the realm. To the perpetual memory of which thing, we the aforesaid Prelates have put our seals to these presents."

So zealous were our ancestors to preserve their liberties from incroachments, that they employed all the strength of human policy and religious obligations to secure them entire and inviolate. And since this act is still in as much force as the act against conventicles, I cannot fathom the reason why our Prelates should not as well hold themselves obliged twice a year to accurse the infringers thereof, as to prosecute protestant dissenters: However we may note, that by this statute, chap. 2, it is expressly provided, that if any judgments be given from that time forward against any of the points of Magna Charta, they shall be annulled, and holden for nought; therefore quere, whether the conviction of protestant dissenters by a Justice, and spoiling them of their goods, without any trial and conviction by a jury, which is expressly against the 29th chapter of Magna Charta, ought to be taken notice of, and redressed, and the original promoters thereof to be cursed by my Lords the Bishops, as aforesaid?



*A Statute made Anno. 25. Edw. 1, commonly called De Tallagio non concedendo.*

C H A P. I.

*The King, or his Heirs, shall have no Tallage or Aid, without Consent of Parliament.*

**N**O tallage or aid shall be taken or levied by us, or our heirs, in our realm, without the good will and assent of Archbishops, Bishops, Earls, Barons, Knights, Burgeesses, and other freemen of the land.

C H A P. II.

*Nothing shall be purveyed to the King's Use, without the Owner's Consent.*

**N**O officer of ours, or of our heirs, shall take corn, leather, cattle, or any other goods, of any manner of person, without the good will and assent of the party to whom the goods belonged.

*Nothing shall be taken of Sacks of Wool, by Colour of Maletot.*

C H A P. III.

**N**OTHING from henceforth shall be taken of sacks of wool, by colour or occasion of maletot.

C H A P. IV.

*All Laws, Liberties, and Customs, confirmed.*

**W**E will and grant, for us and our heirs, that all clerks and laymen of our land, shall have their laws, liberties, and free customs, as largely and wholly as they have used to have the same at any time when they had them. And if any statutes have been made by us and our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present Charter, we will and grant, that such manner of statutes and customs shall be void and frustrate for evermore.

C H A P.



## C H A P. V.

*Pardon granted to several Offenders.*

**M**OREOVER, we have pardoned Humphry Bohun, Earl of Hereford and Essex, Constable of England; Roger Earl of Norfolk and Suffolk, Marshal of England; and other Earls, Barons, Knights, Esquires, and namely, John de Ferrariis, with all other being of their fellowship, confederacy and bond; and also of other that hold 20 l. land in our realm, whether they hold of us in chief, or of others, that were appointed at a day certain to pass over with us into Flanders, the rancour and evil will borne against us, and all other offences, if any they have committed against us, unto the making of this present Charter.

## C H A P. VI.

*The Curse of the Church shall be pronounced against the Breakers of this Charter.*

**A**ND for the more assurance of this thing, we will and grant, that all Archbishops and Bishops for ever shall read this present Charter in cathedral churches twice in the year, and upon the reading thereof in every of their parish churches, shall openly denounce accursed all those that willingly do, or procure to be done, any thing contrary to the tenor, force and effect, of this present Charter, in any point and article. In witness of which thing we have set our seal to this present Charter, together with the seals of the Archbishops and Bishops, which voluntarily have sworn, that as much as in them is, they shall observe the tenor of this present Charter in all clauses and articles, and shall extend their faithful aid to the keeping thereof, &c.

*The Comment.*

**T**HE word tallage is derived from the French word *tailler*, to share or cut out a part, and it is metaphorically used for any charge, when the King or any other



other does cut out, or take away, any part or share out of any man's estate ; and being a general word, it includes all subsidies, taxes, tenths, aids, impositions, or other charges whatsoever.

The word *maletot* signifies an evil (that is an unjust) toll, custom, imposition, or sum of money.

The occasion of making this statute was this ; King Edward being injured by the French King, resolves to make war against him, and in order thereunto requires of Humphry le Bohun, Earl of Hereford and Essex, and Constable of England, and of Roger Bigot, Earl of Norfolk and Suffolk, and Marshal of England, and of all the Earls, Knights, Esquires, and freeholders of 20 l. land, who held of him *in capite*, to contribute towards such his expedition, that is, to go in person, or find sufficient men in their places, in his army ; which the Constable and Marshal, and many of the Knights and Esquires, and especially this John Ferrers, taking part with them, and all the freemen stoutly denied, unless it were ordained and determined by common consent in Parliament, according to law. And, it seems, the contest grew so hot, that a strange dialogue passed between them, viz. that when the Earl Marshal told the King, *that if his Majesty pleased to go in person, he would then go with him, and march before him, in the van-guard, as by right of inheritance he ought to do ; but otherwise he would not stir* ; the King told him plainly, he should go with any other, though he went not in person. *I am not so bound* (saith the Earl) *neither will I take that journey without you.* The King swore, *by God, Sir Earl, you shall either go or hang.* And I swear by the same oath, (saith the Earl) *I will neither go nor hang.* And so the King was forced to dispatch his expedition without them. And yet, saith my Lord Coke, although the King had conceived a deep displeasure against the Constable,



stable, Marshal, and others of the nobility, gentry and commons of the realm, for denying that which he so much desired, yet, for that they stood in defence of their laws, liberties, and free customs, the said King Edward the First (who, as Sir William Herle, Chief Justice of the common pleas, who lived in his time, and served him, said in the time of King Edward the Third, was the wisest King that ever was) did, after his return from beyond the seas, not only consent to this statute, whereby all such tallages and impositions are forbidden for the future, but also passes a pardon to all the nobles, &c. of all rancour, ill-will, and transgressions, if any they have committed; which last words were added, lest by acceptance of a pardon of transgressions they should implicitly confess, that they had transgressed; so careful were the Lords and Commons in former times to preserve the ancient laws, liberties, and free customs, of their country.

But note these words, *si quas facerint*, if any they have committed, are left out in all the printed books of statutes; but they are in this statute recited by Coke, in his second book of institutes, fol. 535, and specially noted; which would never have been done, if it had not been so in the rolls. And since it is probable there may be many more like omissions, mistakes and falsifications, crept into the prints, and for that the record, and not the printed statute book (varying from the records) is the law, it were to be wished, that all the rolls of acts of Parliament were carefully, by some persons of learning and integrity, viewed and compared with the prints, and notice taken of all such variations, and of errors committed in the translations, and of any statutes of a public import, if in force, that were never printed, and the same to be made public.

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This by the by : Now to return to the statute : Those who have exalted the prerogative above the laws, and particularly Dr. Heylin, in his advertisements on the history of Car. i, fol. 89, tells us, “ that the Norman Conqueror knew his own strength too well, to reign *precario* ; he won the kingdom by his sword, and by that he kept it : ’Tis true, the people did petition for a restitution of the laws of King Edward the Confessor, in which an immunity from extraordinary taxes might be granted to them ; but neither he or William Rufus, who succeeded, did ever part with so much of their power, as not to raise money on the subjects for their own occasions whensoever they pleased : And it is true also, that both King Henry I. and King Stephen, who came to the crown by unjust and disputable titles, did flatter the people when they first entered on the throne with an hope of restoring the said laws ; but they were not so good as their words. The first of our Kings which gave life to those old laws, was King Henry II. the first grantor of the Magna Charta, which, notwithstanding, he did not keep so exactly, as to make it of any strength or consequence to bind his heirs ; but the Commons having once tasted the sweetness of it, they with the Lords, in a long war against King John, extorted it from him by a strong hand, and had it confirmed unto them at a place called Running-Mead, near Staines, anno. 1215, confirmed afterwards in more peaceable times by King Henry III. in the ninth year of his reign, but so that he and his successors made bold with the subject notwithstanding in these money matters, till the statute *De Tallagio non concedendo* was passed by Edward of Carnarvan, eldest son to King Edward III. (but I suppose he meant to Edward I.) at such time as his father was beyond the seas, in the war of Flanders ; which being dis-

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allowed



allowed by the King at his coming home, seems to have been taken off the file, to the intent it might not pass for a law for the time to come; nor is it to be found now in the records of the Tower amongst the laws of that King's time, as are all the rest."

This is the account given us by that learned historian, both of the Magna Charta and of our statute *De Tallagio*, &c. but before I make any particular answer to it, I cannot but observe what a mean contrivance it was of those who designed to invade the liberties of the people, that as soon as any statute was made to confirm those liberties, it was presently taken off the file, that it might not remain as a record, and pass into a law.

But a law it was, notwithstanding the record was taken away, as both Magna Charta and this statute were from the rest of the records; and when the people stood up for their liberties, a way was found out to confirm these laws, and particularly Magna Charta; and that was by the *inspeximus* of this very King, I mean Edward I. by which word it was signified, that the King had seen the record, which he recited *verbatim*, and then he confirmed it.

But the statute *De Tallagio non concedendo*, though it was taken off the file, remains in force to this very day; and I do not find, notwithstanding what Dr. Heylin hath told us, that any of our Kings ever exercised such a prerogative, as to impose a general tax on the people, without their consent in Parliament, but in the violent reigns of the two Williams, the father and the son, and then the taxes were laid on the English, and not on the Normans.

'Tis true, the Kings of England have taxed their tenants in *ancient demesne*, without their consent in Parliament, but this was not a general tax of the people; besides, these tenants were exempted from being taxed with



with the rest of the nation in Parliament, because they were liable to give the King a tallage, *ratione tenuræ*, whenever he had occasion for it; and this was accounted rather a privilege than otherwise, because they were free from all other taxes and parliamentary attendance, and were taxed much less than the rest of the people, in regard of their tilling the King's lands for the maintenance of his household; but when this reasonable prerogative was abused, and the exactions levied upon these tenants became intolerable, then they would no longer pay, but got it remedied by this statute *De Tallagio*, &c.

So likewise the tenants, who held of the King by Knight's service, taxed themselves out of Parliament. Now for the true understanding of this matter, it will be necessary to be a little more particular, because arguments have been deduced from thence to prove that taxes may be raised upon the people without their consent in Parliament. William, called the Conqueror, divided several lands in England amongst his great followers, to find so many horses and arms, and to do particular services; and their descendents afterwards held those lands upon the same tenure, which was called *Knight's service*, and the tenants were called tenants *in capite*, because they held immediately of the King as of his crown.

He likewise gave other lands to persons to perform meaner services, as to be his Woodward, Forester, Huntsmen, Falconers, &c. which was properly called a tenure in *petit serjeanty*; not but that the presenting him with a bow and arrow, or a pair of spurs, every year, might be called so too.

Some of our historians have found out an ancient record to prove, that these tenants *in capite* did tax themselves out of Parliament, viz. anno. 19 H. 3, there is



a writ directed by that King to the Sheriff of Suffex, reciting, that the Lords spiritual and temporal, and all others who held of him *in capite*, had voluntarily, *et sine consuetudine*, granted to him an aid of two marks for every Knight's fee, and therefore he was commanded to distrain for it, &c.

But this writ only proves, that the King's tenants *in capite* gave him an aid in an unprecedented manner; for the writ tells us, it was *sine consuetudine*; neither was this a general tax, for almost half the lands in England were then in the possession of Bishops, Abbots, Priors, &c. and near two thirds of those lands were held *in libera elemosyna*, and not of the King *in capite*; and all the lands, almost in whole counties, were held by others in free socage, so that the tenants *in capite* could not tax them, though they might tax themselves. 'Tis true, some of our Kings did tax the under tenants of these tenants *in capite*, who were both numerous and rich; and this they did out of Parliament, apprehending that they might as well tax such under tenants, as the tenants *in capite* might tax themselves.

But this was straining the prerogative too far; and those under tenants being made uneasy by such exactions, they joined with the whole nation, to recover their liberties, which in this particular was done by this statute *De Tallagio non concedendo*.

My Lord Coke, in his 2d Inst. fol. 432, tells us, that the year before this statute was made, the King had taken a tallage of all cities and boroughs without assent of Parliament; whereupon arose a great murmuring and discontent amongst the Commons; for pacifying which discord between the King and his Nobles, and for the quieting the Commons, and for a perpetual and constant law for ever, both in this and in other like cases, this act was made, &c. being no other than a restitu-

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tion to the subjects of all their laws, liberties, and free customs, as freely and wholly as at any time before.

Now if this is a true account of the making this statute, it might be passed by Edward of Carnarvan, who was eldest son to Edward I. and was probably Regent here whilst his father was in Flanders; but it was not disapproved by him at his return, because it was made for the quieting the people, whom he had incensed a little before, by exacting a tallage from those who dwelt in cities and boroughs, without their assent in Parliament; and it is not likely so wise a King as Edward I. would aggravate his subjects by dissenting to such a reasonable law, to restore them to their liberties, especially when at the same time he was engaged in wars against his enemies abroad.

And though we are told by the aforesaid Doctor, that notwithstanding *Magna Charta*, both King John himself, and some of his successors, made bold with the people in money matters until this statute was made: He might as well have told us, that though we have several good laws to secure our properties, yet we very often meet with men on the road, who make bold with us in money matters; but certainly such boldness doth not make what they do lawful; but the Doctor had forgot the rule, that *a facto ad jus non datur consequentia*.

And here it may not be improper to mention an attempt to raise money without consent of Parliament, in a late reign, which was called *ship-money*, i. e. money raised only by the King's proclamation to build ships, and to provide naval stores for the defence of the nation, when in danger; and the King was to be sole judge of that danger: And accordingly great sums were levied on the subjects, and those who refused to pay were committed without bail, and no *Habeas Corpus* would be allowed to discharge them.

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It is true, this money was not squandered away, but the *Royal Sovereign*, a ship well known by that name, and some other ships, were built with it: And though the King was then engaged in a war with the House of Austria, to restore his brother-in-law to the *Palatinate*, which was his inheritance, and this at the desire of the Parliament, from whom he could afterwards have no assistance, and was therefore forced to make use of some exorbitant methods to raise money (of which this was one) and though he did it by the advice of his Privy Council, and almost all the Judges, yet it being illegal, and an infringement of the liberties of the people, it made them discontented; and therefore before the Parliament sat in the year 1640, he released all those who were in prison for not paying this money, and wholly acquiesced in the judgment of both Houses, who condemned these proceedings as illegal; and he left all the Judges who gave their opinion for it to the judgment of Parliament.

There was about that time another way found out of raising money without the Parliament, and that was by tonnage and poundage, *i. e.* so much for every ton of certain goods, and one shilling for every pound in value of other goods, brought into the kingdom, or exported.

This was a subsidy first granted to H. 6, and to all successive Kings, by the Parliament, for and during their respective lives; but it being levied by King Car. 1, before it was granted by the Parliament, as soon as they met they drew up a remonstrance against it; and at the end of the sessions they voted, not only that the Ministers who levied it, but that those who voluntarily paid it, were betrayers of the liberties of England, and enemies to the commonwealth.



ANNO. 25 E D W A R D III.

*A Declaration what Offences shall be judged Treason.*

**W**H E R E A S divers opinions have been before this time, in what case treason shall be said, and in what not; the King, at the request of the Lords and Commons, hath made a declaration in the manner as hereafter followeth, that is to say: When a man doth compass or imagine the death of our Lord the King, or of our lady his Queen, or of their eldest son and heir. Or if a man do violate the King's companion, or the eldest daughter unmarried, or the wife of the King's eldest son and heir. Or if a man declare war against our Lord the King in his realm, or be adherent to the King's enemies in his realm, giving them aid and comfort in the realm, or elsewhere, and therefore be *provably* attainted, of open deed, by the people of their condition. And if a man counterfeit the King's great seal, or privy seal, or his money. And if a man bring false money into this realm, counterfeit to the money of England, as the money called Lushburgh, or other, like to the said money of England, knowing the money to be false, to merchandize or make payment, in deceit of our said Lord the King, and of his people. And if a man slay the Chancellor, Treasurer, or King's Justices of the one bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear and determine, being in their places doing their offices. And it is to be understood, that in the cases above rehearsed that ought to be judged treason, which extends to our Lord the King, and of his royal Majesty. And of such treason the forfeiture of the escheats pertaineth to our Lord, as well of the lands and tenements holden of others, as of himself. And moreover there is another manner of treason, that is to say, when a servant slayeth his master, or a wife her husband,



husband, or when a man, secular or religious, slayeth his prelate, to whom he oweth faith and obedience. And of such treason the escheats ought to pertain to every Lord of his own fee. And because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time: It is accorded, that if any other case, supposed treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the King and his Parliament, whether it ought to be judged treason or other felony. And if percase any man in this realm ride armed covertly or secret with men of arms, against any other, to slay him, or rob him, or take him, or retain him, till he hath made fine and ransom to have his deliverance; it is not the mind of the King nor his Council, that in such case it shall be judged treason, but shall be judged felony, or trespass, according as the law of the land of old time used, and according as the case requireth. And if in such case, or other like before this time, any Justices have judged it treason, and for this cause the lands and tenements have come to the King's hand as forfeit; the chief Lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the King's hands, or in others by gift, or in other manner. Saving always to our Lord the King the year and waste, and the forfeitures of chattels, which pertain to him in the cases above named. And that the writs of *Scire Facias* be granted in such case against the land tenants, without other original, and without allowing any protection in the said suit. And that of the lands which be in the King's hands, writs be granted to the Sheriffs of the counties where the lands be, to deliver them out of the King's hands without delay.



*The Comment.*

**T**REASON is derived from *trahir*, which signifies treacherously to betray: When it concerns the government and the public, it is called high treason, but against particular persons, as a wife killing her husband, a servant his master, &c. it is petty treason.

High treason in the civil law is called *crimen læsæ majestatis*, a crime wronging majesty; but in our common law Latin, *alta proditio*, and in an indictment for this offence, the word *proditorie* must be in.

Before the making this act, so many things were charged as high treason, that no man knew how to behave himself. Now by this statute the particulars of that grand crime are reckoned up, and all others excluded, till declared by Parliament. And the settling of this affair was esteemed of such importance to the public weal, that the Parliament wherein this act passed was called long after *benedictum Parliamentum*, the blessed Parliament.

The substance of this statute is branched out by my Lord Coke, 3d part of Instit. fol. 3, into 6 heads, viz.

The first concerning death, by compassing or imagining the death of the King, Queen, or Prince, and declaring the same by some overt-deed. By killing and murdering the Chancellor, Treasurer, Justices of Assize, Justices of either Bench, Justices in Eyre, Justices of Oyer and Terminer, in their places doing their offices.

The second is to violate, that is, to carnally know, the Queen, the King's eldest daughter unmarried, the Prince's wife.

The third is, levying war against the King.

The fourth is, adhering to the King's enemies, within the realm or without, declaring the same by some overt-act.



The fifth is, counterfeiting the great, the privy seal, or the King's coin.

The sixth and last, by bringing into this realm counterfeit money, to the likeness of the King's coin.

Now as to the particular exposition of the several parts of this statute :

1. *When a man doth compass, &c.* In the original it is *quant homo*, which extends to both sexes; but one that is *non compos mentis*, or an infant within the age of discretion, is not included; but all aliens within the realm of England, being thereby under the King's protection, and owing a local allegiance, if they commit treason, may be punished by this act; but otherwise it is of an enemy.

2. *To compass and imagine*, is to contrive, design, or intend the death of the King; but this must be declared by some overt-act. But declaring by an open act a design to depose or imprison the King, is an overt-act to manifest the compassing his death. For they that will depose their King, will not stick to murder him, rather than fail of their end, and (as King Charles the first excellently observed, and lamentably experienced) *there are commonly but few steps between the prisons and the graves of Princes.*

3. By the word *King* is intended, 1. A King before his coronation, as soon as ever the crown descends upon him; for the coronation is but a ceremony. 2. A King *de facto*, and not *de jure*, is a King within this act; and a treason against him is punishable, though the right heir get the crown. 3. A titular King, as the husband of a Queen, is not a King within this act, but the Queen is; for the word *King* includes both sexes.

4. What is to be understood by the King's eldest son and heir within this act? I answer, 1. A second son, after the death of the first-born, is within this act; for he



is the eldest. 2. The eldest son of a Queen regnant is as well within the statute, as of a King. 3. The collateral heir apparent, or presumptive, is not within this statute. Roger Mortimer, Earl of March, was in anno. Dom. 1487, 11 Rich. II. proclaimed heir apparent. Anno. 37 Hen. VI. Richard Duke of York was likewise proclaimed heir apparent, and so was John de la Pool, Earl of Lincoln, by Richard III. And Henry, Marquis of Exeter, by King Henry VIII. But none of these, or the like, are within the purview of this statute, saith my Lord Coke, 2 Inst. fol. 29.

*Note.* Whereas in the printed statute book, it is there said, *probably attainted*, the same is a great error; for the words of the record are, *et de ceo provablement soit attaint: And shall be thereof provably attaint*: And I cannot but admire that such a gross mistake should be suffered, since my Lord Coke has so expressly observed the difference, in these words following, 3 Inst. fol. 12. In this branch, saith he, four things are to be observed: This word, *provablement*, *provably*, that is, upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb *provablement*, *provably*, hath a great force, and signifieth a direct and plain proof; which word the Lords and Commons in Parliament did use, for that the offence was heinous, and was so heavily and severely punished, as none other the like; and therefore the offender must *provably* be attainted, which words are as forcible as upon direct and manifest proof. *Note*, the word is not *probably*, for then *commune argumentum* might have served; but the word is *provably* be attainted. 2. This word, *attaint*, necessarily implieth, that he be proceeded with, and attainted according to the due course and proceedings of law, and not by absolute power, or by other means,



means, as in former times had been used. And therefore if a man doth adhere to the enemies of the King, or be slain in open war against the King, or otherwise die before the attainder of treason, he forfeiteth nothing, because, as that act saith, he is not attainted: Wherein this act hath altered that, which before this act, in case of treason, was taken for law. And the statute of 34 Edward III. cap. 12, saves nothing to the King but that which was *in esse*, and pertaining to the King at the making of that act. And this appeareth by a judgment in Parliament, in anno. 29 H. VI. cap. 1, that Jack Cade being slain in open rebellion, could no way be punished, or forfeit any thing, and therefore was attainted by that act of high treason. 3dly, *Of open deed per apertum factum*; these words strengthen the former exposition of provablement; an overt-act must be alledged in every indictment upon this act, and proved; compassing by bare words is not an overt-act, as appears by many temporary statutes against it. But there must be some open act, which must be manifestly proved; as if divers do conspire the death of the King, and the manner how, and thereupon provide weapons, powder, poison, harness, and the like, for the execution of the conspiracy. If a man be arraigned upon an indictment of high treason, and stand mute, that is, refuse to plead, he is not to be pressed to death, but shall have the same judgment, and incur such forfeiture, as if he had been convicted by verdict, or had confessed it. For this standeth well with this word, *provablement*, for *fatetus facinus qui judicium fugit*. But otherwise it is in case of petit treason, murder, or other felony. If a subject conspire with a foreign Prince, to invade the realm by open hostility, and prepare for the same by some overt-act, this is a sufficient overt-act for the death of the King. 4thly, The composition and connexion of the words are to be observed,



observed, viz. *thereof be attainted by open deed*. This, as was resolved by the Justices in Easter term, 35 Eliz. relateth to the several and distinct treasons before expressed, and especially to the *compassing and imagination of the death of the King, &c.* for that is a secret in the heart, and therefore one of them cannot be an overt-act to another, as for example, a conspiracy is had to levy war, this, (as hath been said and so resolved) is no treason by this act, until it be levied; therefore it is no overt-act, or manifest proof of the compassing the death of the King within this act; for the words are, *de ceo, &c. thereof*, that is, of the compassing of the death. Divers later acts of Parliament have ordained, that compassing by bare words or saying, should be treason; but are all either repealed or expired. And it was wont to be said, bare words may make an heretic, but not a traitor, without an overt-act.

And the wisdom of the makers of this law would not make words only to be treason, seeing such variance commonly among witnesses about the same, as few of them agree together. But if words be set down in writing by the delinquent himself, that is a sufficient overt-act within this statute.

And this was one Williams's case, who wrote a book called *Speculum Regale*, wherein he foretold the death of the King.

And even words themselves may be laid as an overt-act of treason; for it is the natural way to express our wicked intentions, and this was one Crohagon's case, an Irishman, who being beyond sea, said, *I will kill the King, if I can come at him*; and afterwards he came into England, and was apprehended and indicted for compassing the death of the King, and these words were laid in the indictment as an overt-act, and being proved, he was convicted of high treason.



It is true, my Lord Coke, in his pleas of the crown, fol. 14, was of a contrary opinion, viz. that words are not an overt-act; but in the case of the regicides, that opinion was denied to be law.

In the 13th year of King James, one Owen declared, that the King being excommunicated by the Pope, might be deposed or killed: I do not find that this was laid as an overt-act of treason at that time; but it was never yet doubted but that sending letters, to incite wicked persons to attempt it, or printing any treasonable positions, was high treason.

Gathering men together, to compel the King to comply with their demands, or to remove evil counsellors, or to conspire with a foreign prince to invade the kingdom; these and such like are overt-acts to make a man guilty of high treason.

In the preamble of the statute 1 Mar. concerning the repeal of certain treasons (declared to be so after the making this statute 25 Ed. III. and before that time) and for bringing back all treasons to be comprehended in some of the branches thereof, it was agreed by the whole Parliament, that, *laws justly made for the preservation of the commonwealth, without extream punishment, are more often obeyed and kept, than laws and statutes made with great and extream punishments, and in special, such laws and statutes so made, whereby not only the ignorant, rude and unlearned people, but also learned and expert people, minding honesty, are oftentimes trapped and snared, yea many times for words only, without other act or deed done or perpetrated*; therefore this act of 25 Ed. III. doth provide, that there must be an overt-act; but words without an overt-act are to be punished in another degree, as an high misprison.



*By people of their condition, that is their equals.*

As to treason by levying war, it is true a conspiracy, or compassing to do it, is not high treason, if the war is not actually levied; this appears by the statute 13 Eliz. cap. 1, which made such conspiracy treason during her life: But if a war is levied, then the conspirators are all traitors, though they may not all be in arms; and if it is not levied, yet the meeting and consulting to do it, is a sufficient overt-act to prove the compassing and imagining the death of the King.

Raising forces for any public end or purpose is treason, as may appear in the instances following:

Some London apprentices were committed for a riot, and some other apprentices conspired to release them, and to kill the Lord-Mayor; and intending to provide themselves with armour, they broke open two houses near the tower; they got a trumpet, and hung an old cloak on a pole for their colours, and were going towards the Lord-Mayor's house in this tumultuous manner, but were opposed by the Sheriffs, whom they resisted; and this was adjudged high treason, by levying war, &c. and within the statute of 13 Eliz.

So where one Cotton, and several other London apprentices, assembled to pull down bawdy houses, in Moorfields, and having chosen Captains amongst themselves, they marched in a warlike posture, and wounded the Constables, and opposed the King's guards, who came to suppress them; all which being found by a special verdict at the Old Bailey, upon an indictment against some of them, it was adjudged high treason, in levying war against the King; and some of them were executed.

Several conspired in Oxfordshire to pull down inclosures, and intended to go to the Lord Norris's house, to furnish themselves with armour and horses, and from thence



thence to London, and there to join with more; this was likewise adjudged to be treason.

Two or more conspired to levy war, and one of them did afterwards actually raise forces; this was adjudged by all the Judges to be high treason in all of them; and this was Sir Nicholas Throgmorton's case, who conspired with Wyat.

As concerning the interpretative treasons, by killing the Chancellor, Treasurer, Justice of one or the other bench, Justice in Eyre, or of Assize, or Oyer and Terminer; the statute extends only to the persons therein named, and not to the Lord Steward, Constable or Marshal, or Lords of Parliament; and it extends only to those, during the time they are in the said offices, and not afterwards, nor when they are wounded, unless they die of those wounds.

By the statute 3 H. 7, cap. 14, compassing to kill a Privy Counsellor is felony, but by a late statute, made in the ninth year of Queen Anne, cap. 16, reciting that Anthony Guiscard, being under an examination before a committee of Privy Council for treason, did with a penknife stab Robert Harley, Esq; then Chancellor of the Exchequer, and a Privy Counsellor, and being committed for the said crime, died in Newgate; and there being no sufficient punishment by the laws now in being for assaulting, or wounding a Privy Counsellor, it was therefore enacted, that *if any person unlawfully attempted to kill, or should unlawfully assault, and strike, or wound a Privy Counsellor, when in the execution of this office, the offender being convicted thereof, should be a felon, and should suffer death, as in cases of felony, without benefit of clergy.*

Counterfeiting the great or privy seal is treason; but it must be an actual counterfeiting it, for compassing to do so is not treason; neither is it treason for the Chancellor



lor to fix the great seal to any thing without a warrant : So fixing a new great seal to another patent, is a great misprison, but no treason, because it is not a counterfeiting within this statute ; neither is the counterfeiting the privy signet or sign manuel treason within this act, but it is made so by the statute 1 Mar. cap. 6.

One Leak glued two parchments so close together, that it could not be perceived, and then he put a label through both, and upon the uppermost he wrote a patent, and got the great seal fixed to the label ; then he took off the written parchment, and left the label hanging to the blank ; this was adjudged a great misprison.

One Robinson counterfeited the privy seal, and a patent ; but he omitted some words in the stile of the King, and added other words, on purpose that there might be a difference between the real patent which was truly sealed, and the privy seal, which was counterfeited ; and by the help of this counterfeited privy seal, he obtained the great seal to his patent ; this was declared to be high treason, for having collected money by these counterfeits, he had usurped regal authority.

As to the coin, it was treason at common law for any subject to make it, though he did not utter it ; but to counterfeit it was made treason by this statute.

Clipping, washing, and filing, were not counterfeiting within this law ; those offences were made high treason by a subsequent statute, viz. 5 Eliz. cap. 1 ; but without corruption of blood, or loss of dower.

Neither is impairing, diminishing, falsifying or scaling the coin, any counterfeiting within this statute ; but it is made treason by the statute 18 Eliz. without corruption of blood, &c.

And forging any foreign coin, if current here by proclamation, is high treason by the statute 1 Mar. cap. 6 ; and if not current here, it is a misprison of treason in the

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principal



principal forgers, their aiders and abettors, by the statute 14 Eliz. cap. 3.

The second offence concerning money, here declared to be treason, is, if any person bring into this realm counterfeit money: Where *note*, 1. it must be counterfeit. 2. Counterfeited to the similitude of English money. 3. It must be brought from a foreign realm, and therefore not from Ireland. 4. It must be brought knowingly. 5. Brought, and not barely uttered here. But by the statute *De Moneta*, if false or clipped money be found in a person's hands, and he be suspicious, he may be arrested till he can clear himself. 6. He must merchandize therewith, that is, make payment thereof.

As this statute leaves all other doubtful matters to be declared treason in Parliament, but not to be punished as such till so declared; so in succeeding Kings reigns, abundance of other matters were declared treason, which being found very grievous and dangerous, by the statute of 1 Mar. cap. 1, it is enacted, *That thenceforth no act, deed, or offence, being by act of Parliament, or statute, made treason, petty treason, or misprison of treason, by words, writing, cyphering, deeds, or otherwise however, shall be taken, had, deemed or adjudged to be high treason, petty treason, or misprison of treason, but only such as be declared and expressed to be treason, petty treason, or misprison of treason, by this statute of 25 Edw. 3.*

The offences made treason, since the first year of Queen Mary, are as follow:

Refusing the oath of supremacy upon the second tender, is treason by the statute 5 Eliz. cap. 1, but no corruption of blood; and by the same statute, it is treason to bring into this realm the Pope's bulls, or to put them in execution, or reconciling any of the subjects to the church of Rome, or absolving them from their obedience, or for a priest to come into England, and not to submit



submit himself in two days; the like for Englishmen in foreign seminaries, 27 Eliz. cap. 2.

So likewise by an act made in the 4th and 5th years of the late Queen Anne, for the better security of her Majesty's person and government, it is enacted, that if any person after the 25th of March, 1706, shall maliciously, advisedly, or directly, by writing or printing, declare or affirm that the Queen is not lawful Queen, or that the pretended Prince of Wales hath any title to the crown, or that any other person hath a right to it, otherwise than according to the act of settlement, made 1 and 12 W. or that the Kings and Queens of England are not able, by the authority of their Parliaments, to make laws sufficient to limit and bind the crown of this realm, shall be guilty of high treason, and being thereof convicted and attainted, shall suffer death, and all losses and forfeitures, as in cases of high treason.

And if any one by preaching, teaching, or advised speaking, shall declare, maintain or affirm as aforesaid, such person being lawfully convicted, shall incur the penalty of a *Præmunire*, i. e. they shall be out of the King's protection, shall be committed to prison, and lose their lands and tenements, goods and chattels.

But by this statute, if the prosecution be for words, there must be information given of them upon oath to one or more Justices of the Peace, within three days after such words were spoken; and the prosecution must be within three months after such information, and the conviction must likewise be by the oath of two credible witnesses.

It is to be observed, that in high treason there are no accessaries; and therefore my Lord Coke tells us, that what will make a man accessory to a felony before the fact, the same will make him principal in high treason.

Now as to trials for treason, there hath been a considerable alteration made in the law for the benefit of the



subject in late years ; and one would wonder, that amongst a people so jealous of their liberties, it had not been done before ; or indeed, that in these cases, where the punishment is so great, the criminal should not have the same benefit of defending himself, as he hath for a common trespass.

My Lord Coke, in the 12th year of King James, tells us, that the Jesuits had slandered our law in cases of trials for treason, because the offenders had neither counsel allowed, and that their witnesses were not examined on oath.

But in this the Jesuits were mistaken, for counsel is allowed the prisoner, but it is with leave of the court ; it is true, his witnesses formerly were not on oath, and he was under many hardships after his commitment ; his friends (if he had any) were not suffered to come to him ; he had neither pen, ink, or paper allowed, and was altogether ignorant for what species of treason he was committed, or who were the witnesses that accused him ; for he could not have the copy of the indictment ; if by chance any person was so hardy as to give him any manner of advice, without leave of the court, such person was punishable ; and if upon this arraignment he desired counsel, upon any point of law, arising upon the fact, such counsel must be ready to argue it *instantly*, and the court usually gave judgment upon the point so argued, at the same time.

The whole proceedings against him were very strict ; for though he might except against any of the jury, yet that could be no manner of advantage to him, because he was not allowed a copy of the panel, that he might consider against whom to except.

If he produced any witnesses (it was right as the Jesuits observed) they were not examined upon oath, and this, as it hath been very justly observed, was either



too great an advantage for the prisoner, or rather none at all; for if the witnesses not sworn, should have equal credit with those who were, then the prisoner had too great an advantage; but if they were to have no credit with the jury, because not sworn, then it was meer trifling to suffer him to produce any witnesses all.

But the Parliament, in the seventh year of the late King William, wisely considering that truth cannot well appear but by the testimony of witnesses, thought it absolutely necessary to put the highest obligations on them, and that on both sides, which is an oath.

Therefore they provided, that a person indicted for treason, by which corruption of blood might be made, or for misprison of such treason, shall have a copy of the whole indictment five days before his trial, he desiring the same; and that he may advise with counsel, and make his full defence by two of them; that his witnesses shall be upon oath, and that he pay for the copy of his indictment, not exceeding five shillings; but he is not to have the names of the witnesses for the King.

It is farther enacted, that no man shall be indicted, tried or attainted of such treason, or misprison of treason, but upon the oath of lawful witnesses, who shall both speak to the same overt-act of treason, or to different acts, but of the same treason, unless the prisoner is mute, refuseth to plead, or challengeth above thirty-six peremptorily, or confesseth the fact.

But such offender may be outlawed, and if attainted by outlawry, yet he may come in and be tried by law after such outlawry, and he shall upon his trial have the benefit of this act.

And where distinct treasons of divers kinds are alleged in one indictment, one witness to one species of treason, and another witness to another, shall not betwixt witnesses within the meaning of the law; and no evidence shall



shall be given of an overt-act, unless expressly laid in the indictment.

The prosecution shall be within three years after the offence committed, except it be for treason in designing or attempting the assassination of the King.

No indictment shall be quashed for mis-writing, or for false or improper Latin, unless exception be taken to the same, before the evidence given in court; neither shall any such matter be a sufficient cause to arrest the judgment after conviction; yet it may be reversed by writ of error.

When a Peer is tried, all the Peers who have a right to sit and vote in Parliament, shall be summoned twenty days before the trial; and they must take the oaths, &c.

But this act doth not extend to any indictment for counterfeiting the coin, the great seal, &c.

These are the inconveniences remedied by this act, 7 W. cap. 3, so that now a person committed for high treason, hath the same liberty and method of defending himself, as if he had been indicted for an ordinary trespass.

But as to indictments for treason, they must be found in the county where the fact was done; and if it is for levying war, conspiring the death of the King, or adhering to his enemies, *i. e.* by aiding or comforting them, it must conclude *contra ligeantiae suae debitum*: And it is not sufficient, though the particular facts alledged do shew that it was against his allegiance: This was Mr. Walcot's case, who was executed for high treason, and his attainder was reversed for this reason in the House of Lords; but it was by the majority of one vote, and no more\*.

*Another*

\* “ The punishment of high treason in general is very solemn and terrible. 1. That the offender be drawn to the gallows, and not be carried or walk; though usually a sledge or hurdle is allowed, to preserve the offender



Another STATUTE of KING EDWARD the Third. Anno.  
2 Edw. 3, Cap. 2.

*In what Cases only Pardon of Felony shall be granted, &c.*

ITEM. Whereas offenders have been greatly encouraged, because charters of *pardon* have been so easily granted, in times past, of manslaughters, robberies, felonies, and other trespasses against the peace. 2. It is ordained and enacted, that such charters *shall not be granted, but only where the King may do it by his oath*, that is to say, where a man slays another in his own defence, or by misfortune. 3. And also they have been encouraged because that the Justices of the Goal-Delivery, and of Oyer and Terminer, have been procured by great men, against the form of the statute made in the 27th year of the reign of King Ed. grandfather to our Lord the King, wherein is contained, that Justices assigned to take assizes, if they be lay-men, shall make deliverance; and if the one be a clerk, and the other a lay-man, that the Lay-Judge, with another of the country, associate to him, shall deliver the goals. 4. Wherefore it is enacted, that Justices shall not be made against the form of the said statute. 5. And that the assizes, attainments, and

offender from the extreme torment of being dragged on the ground or pavement. 2. That he be hanged by the neck, and then cut down alive. 3. That his entrails be taken out, and burnt, while he is yet alive. 4. That his head be cut off. 5. That his body be divided into four parts. 6. That his head and quarters be at the King's disposal.

“ In the case of coining, which is a treason of a different complexion from the rest, the punishment is milder for male offenders; being only to be drawn and hanged by the neck till dead. But in treasons of every kind the punishment of women is the same, and different from that of the men. For as the natural modesty of the sex forbids the exposing and publicly mangling their bodies, their sentence, which is to the full as terrible to sense as the other, is to be drawn to the gallows, and there to be burnt alive.”

*Blackst. Comment. vol. 4, 92, 93.*

certifications



certifications, be taken before the Justices commonly assigned, which should be good men and lawful, having knowledge of the law, and none other, after the form of another statute made in the time of the said King Edward the first. 6. And that the Oyers and Terminers shall be granted, but before the Justices of the one Bench or the other, or the Justices Errants; and that great hurt or horrible trespasses, and of the King's special grace, after the form of the statute thereof ordained in the time of the said grandfather, and none otherwise.

*The Comment.*

*Touching this Statute, and several others to the same Purpose, as 14 Edw. 3, Cap. 14, and 10 Edw. 3, Cap. 2, and 13 R. 2, Cap. 1, and 16 R. Cap. 6, &c.*

*We shall only give you the Words of Coke, in the third Part of his Inst. Fol. 236.*

*What Things the King may pardon, and in what Manner, and what he cannot pardon, falleth now to be treated of.*

**I**N case of death of man, robberies and felonies against the peace, divers acts of Parliament have restrained the power of granting charters of pardon: First, that no such charters shall be granted, but in case where the King may do it by his oath. Secondly, that no man shall obtain charters out of Parliament. Stat. 4 Edw. 3, cap. 13. And accordingly in a Parliament roll it is said, "for the peace of the land it would much help, if good Justices were appointed in every county, if such as be let to mainprize do put in good sureties, as Esquires or gentlemen, and that no pardon were granted but by Parliament." Thirdly, for that the King hath granted pardons of felonies upon false suggestions; it is provided, that every charter of felony, which shall be granted at the suggestion of any, the name of him that maketh the suggestion shall be comprised in the charter; and if the suggestion be found untrue, the charter shall be disallowed.



disallowed. And the like provision is made by the statute of 5 H. 4, cap. 2, for the pardon of an approver.

Fourthly, It is provided that no charter of pardon for murder, treason or rape, shall be allowed, &c. if they be not specified in the same charter, statute 13 R. 2. Before this statute of 13 R. 2, by the pardon of all felonies, treason was pardoned, and so was murder, &c. At this day, by the pardon of all felonies, the death of man is not pardoned. These be excellent laws for direction, and for the peace of the realm. But it hath been conceived, which we will not question, that the King may dispense with these laws by a *non obstante*, notwithstanding, be it general or special, albeit we find not any such clauses of *non obstante*, notwithstanding, to dispense with any of these statutes, but of late times. These statutes are excellent instructions for a religious and prudent King to follow, for in these cases, as it is the highest kingly power to be able to act what he wills; so it is his greatness and nobleness to will only what he lawfully can. Hereof you may read more in Justice Staundford, lib. 2, cap. 32, in divers places of that chapter, of his grave advice in that behalf. Most certain it is, that the word of God has set down this indisputable general rule: *Because sentence against evil men is not speedily executed, therefore the hearts of the children of men are set in them to do evil.* And thereupon the rule of law is grounded: *The hope of impunity encourageth offenders. And the facility of obtaining pardon is an incentive to commit offences.* This is to be added, that the intention of the said act of 13 R. 2, was not that the King should grant pardon of murder by express name in the charter, but because the whole Parliament conceived, that he would never pardon murder by special name, for the causes aforesaid; therefore that provision was made; which was, as in other cases I have observed, grounded  
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upon the law of God: *Whosoever shall shed man's blood, by man also shall his blood be shed, because man was created after the image of God; neither can it be expiated otherwise than by his blood, who spilt the blood of another.* And the words of every pardon are after the recital of the offence, *nos pietate moti*, we being moved with piety, &c. But it can be no piety to violate an express law of God, by letting murder escape unpunished. Thus Coke, whereby we see what opinion he had of such pardons.

But notwithstanding this opinion of my Lord Coke, murders are pardoned by express name; nay the pardon is not good, if the word *murdrum* is left out.

And as to the express law of God, *he that sheddeth man's blood, by man shall his blood be shed*, a very learned casuist hath lately shewed, that it is not binding to a Christian Prince; an abstract of his argument is as followeth:

This is the second law given to Noah after the flood; the first was a prohibition *to eat blood*, which was confirmed many ages afterwards by Moses, and never abrogated; and yet several Christian nations do not take this law to be binding, and particularly this nation; for nothing is more common than to eat blood.

Now if this first law is not binding to Christians, why must the second? especially since it is not a *moral*, but a *positive law*; and such laws are always capable of a dispensation.

As for instance, it was a *positive law* that the Sabbath should be sanctified, and it was a capital crime to do any work on that day; but it is certain that in some cases that law was not binding; for if a city was set on fire on that day, men might leave the church and divine service, and labour to quench it.

It is likewise to be observed, that the proposition is not universal; for it is not that *every murderer* shall be put



put to death, it is only that *by man his blood shall be shed*, i. e. by the *Magistrate*; for if the *supreme power* had committed a murder (as David did) he could not be put to death, because there was no power upon earth above him.

And as it did not extend to the *supreme power*, so in some cases it did not extend to the subject; for if a master had killed his servant, if he did not die immediately under his hand, but lived twenty-four hours, the master was not to die.

So where the law required two witnesses against a murderer, and the offence could be only proved by one, the blood of that murderer could not be shed by any man.

Neither was this a negative law, for it doth not say the supreme Magistrate *shall not pardon a murderer*; it only declares what the punishment shall be.

Now it is certain that Simeon and Levi were guilty of murder, for though Shechem, the son of Hamer, had defiled their sister Dinah, yet he would have married her, and they treated with Jacob her father about it, and agreed to all the terms which Simeon and Levi proposed; but yet was basely murdered by them afterwards.

Those two great Patriarchs, Isaac (who was then living) and Jacob, the father of the murderers, who were men of great piety, and beloved of God, had then the supreme power; and they could not be ignorant of this law given to Noah, because he died but a little above forty years before Isaac was born; yet they did not put this law in execution against the murderers, which they certainly would have done, if they had believed there could be no dispensation; but it is as certain that they were both pardoned, because many years afterwards they went down into Egypt with their father Jacob, and died there.



Neither did this law bind David and the Jews in his time ; for if it had, he who was the best of kings, and a man after God's own heart, could not have transgressed it in pardoning Absalom for a murder.

About eight hundred years after this law was given to Noah, there was another very severe law given by God to Moses, and by him to the children of Israel, in these words, viz. " ye shall take no satisfaction for the life of a murderer, which is guilty of death ; but he shall surely be put to death."

Now these Mosaical laws were either ceremonial or judicial, and given by God, for the better government of other Jews, and therefore bound only them to whom they were given and made known ; therefore they never bound the Gentiles before the coming of our Saviour, nor the Christians since, and the obligation of the ceremonial law ceased, even to the Jews themselves, at the death of our Saviour : And the obligation of the judicial law ceased at the destruction of Jerusalem, when the Jewish commonwealth was utterly destroyed ; so that it is plain, a law not in being cannot be binding.

Neither did the moral law prohibit Princes from pardoning murder ; for that law was written in the heart of Adam at the creation, who had a will to follow the dictates of right reason, but by his fall, it was defaced both in him and all his posterity ; therefore God, by Moses, gave to his own people the Jews the whole substance of that law ; and this he did in the ten commandments, and added the promises of his blessing to those who observed, and punishments to those who transgressed against them.

But these laws did never oblige the Gentiles, for that St. Paul tells us, they, viz. the Gentiles, " who had not the law, do by nature the things contained in the law." Whereby the word *nature* is meant, they do those things which



which are written in their hearts by nature, *i. e.* by the moral law, for no *positive law* whatsoever was or can be written in the heart of man by nature.

As the laws themselves, so the *promises* and *punishments* annexed to them were given only to the Jews, and this will plainly appear by the following instances.

The *promise* added to the fifth commandment, *viz.* “honour thy father and thy mother, that thy days may be long in the land, which the Lord thy God hath given thee,” *i. e.* the land of Canaan, for that was promised and given only to the Jews.

The laws to which *punishments* were annexed were not moral, but positive laws, and those were given to the Jews, to whom they were given after they came out of Egypt, and above 2450 years after the fall of Adam; for if they had been moral laws, they would have bound all men from the creation to this time, and so eternally; but it is evident they do not; and this is by the judgment and consent of all the Christian world.

As for instance; by the Mosaical law, he who cursed or smote his father or mother, or who would not obey them, was to die; and so was he who did any work on the Sabbath: But this was never done amongst Christians; though the law of Moses is very positive, that the one shall be stoned to death, and that the other shall surely die.

The very same words are in the law for punishing a murderer, *viz. he shall surely die.* Now if the murderer was *surely to be put to death*, by the same law, the workman on the Sabbath must be so too; and the greatest part of mankind must be put to death, because there are but very few, who have not done some work on a Sabbath-day.

The Rabbies tell us, that those words, *viz. he shall surely be put to death*, relate only to the Judges, who were



were to take no satisfaction for the life of a murderer, but were obliged to condemn him ; they do not at all relate to the supreme Magistrate, who had a power to pardon.

And this appears by David himself, who was the best of Kings, and certainly knew the Jewish laws as well as any man ; for he reprieved Joab, who had murdered Abner and Amasa, two of the captains of the hosts of Israel, and this was in time of peace ; it is true, he left the execution of the law to his son Solomon, but gave him no direction in it ; for he left it to be done as his son thought fit, who afterwards put him to death.

But he absolutely pardoned Absalom, who was guilty of the blood of his brother Amnon, two years after he had ravished his sister Tamar ; it is true he was afraid of his father's anger, and therefore fled for the fear of being punished ; but after some time, he was brought back to Jerusalem, where he lived two years, in all which time his father would not see him, which made Absalom very uneasy, insomuch that he told Joab he would see the King, saying " if there be any iniquity in me, let him kill me ;" and being brought before him, after he had humbled himself, the King kissed him.

This *reprieve of Joab, and pardon of Absalom*, who were both guilty of murder, were never imputed to David as any manner of crime, or transgression of the laws of Moses, but rather the contrary ; for the scripture tells us, " that he did what was right in the sight of the Lord, and turned not aside in any thing," &c. save only in the matter of Uriah.

Now if David might lawfully *reprieve and pardon a murderer* amongst the Jews, to whom these laws were given by Moses, and which they were strictly bound to obey, there can be no manner of obligation from those laws,



laws, especially to Christian Princes, to whom they were never given, and by which they cannot be bound; but they may reprieve and pardon those who are guilty of murder.

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*Of PARLIAMENTS. Touching the Antiquity, Use, and Power of Parliaments, and the Qualifications of such Gentlemen as are fit to be chosen the People's Representatives.*

THE recital of these several laws before mentioned, for frequent calling of Parliaments, declaring the same to be of such importance, or necessity, to the safety or well-being of the nation, invites us to give the reader some further information, touching those most honourable assemblies.

*Of the Name and Antiquity of Parliaments.*

THE word Parliament is French, derived from the three words *Parler la ment*, to speak one's mind, because every member of that Court should sincerely and discretely speak his mind, for the general good of the commonwealth; and this name (saith Coke, 1 Inst. fol. 110) was used before William the Conqueror, even in the time of Edward the Confessor; but most commonly in the Saxons time, it was called *Micaegemote*, or *Witenage Mote*, that is, the *Great Mote*, meeting or Assembly, whence our *Ward-Motes* in London receive their name to this day, or the *Wise Mote*, that is, the Assembly of the wise men and sages of the land.

But this word Parliament is used in a double sense.

1. *Strictly*, as it includes the legislative power of England, as when we say—*an act of Parliament*: And in this acceptation it necessarily includes the King, the Lords, and the Commons, each of which have a negative voice in making laws, and without their joint consent,



sent, no new laws can pass, that be obligatory to the subject.

2. *Vulgarly*, the word is used for the two Houses, the Lords and Commons, as when we say, the King will call a Parliament, his Majesty has dissolved his Parliament, &c.

The Lords of Parliament are divided into two sorts, viz. *Spiritual*, that is to say, the Bishops (who sit there in respect of their Baronies) parcel of their Bishopricks, which they hold in their politic capacity ; and *Temporal*.

The Commons are likewise divided into three classes, or parts, viz. Knights, or representatives of the shires or counties ; where *note*, that though the writ requires two Knights to be chosen, and that they are called Knights, yet there is no necessity that they should actually have the degree of Knighthood, provided they be but gentlemen ; for the statute 23 Hen. 6, cap. 15, hath these words, “ that Knights of the Shires, for the Parliament hereafter to be chosen, shall be notable Knights of the same counties for which they shall be chosen ; or otherwise such notable Esquires or gentlemen, born of the same counties, as shall be able to be Knights, and no man to be such Knight, which standeth in the degree of a yeoman and under.”

Secondly, Citizens chosen to represent cities.

Thirdly, Burgeesses, that is to say, those that are chosen out of boroughs.

*Note*, That the difference between a city and a borough is this, a city is a borough incorporate, which is or has been, within time of memory, an episcopal see, or had a Bishop ; and this (although the Bishoprick be dissolved, as Westminster having heretofore a Bishop, though none now) still remains a city. Coke 1 Inst. sect. 164. Boroughs are towns incorporated, but such as never had any Bishops.



*Of the three Estates in Parliament.*

THERE has been a great debate about the *three estates*, some zealously pleading, that the Bishops are one of the *three estates* of the realm, and the Lords Temporal a second, and the Commons House the third, and the King over all, as a transcendent by himself: Others as stiffly deny this, and assign the King, as he is the head of the commonwealth, to be the first estate, the Lords, as well Spiritual as Temporal, jointly to be the second, and the Commons House the third.

We shall not presume to undertake a decision of this controversy, but in our opinion the matter seems to appear more difficult than really it is, by means that the contending parties do not first plainly set down what it is they severally mean by the word *estate*, which may be taken, 1. for a rank, degree or condition, of persons considered by themselves different in some notable respects from others wherewith they may be compared. And in this respect, my Lords the Bishops may very properly be said to be an estate, or one of the estates of the realm; for then there will be several estates, above the number of three; for so in the House of Commons there may be said to be three estates, viz. Knights, Citizens and Burgeses. And heretofore, in the days of popery, when there were twenty-six Abbots and Priors, that held *per Baroniam* too, as well as the Bishops, called to the Parliament, and sat in the Lords House. Whether they being religious and monastical persons, whereas the Bishops were seculars (no small difference in their account) might not as well claim to be a distinct estate by themselves, as now the Bishops do, may be a question.

But Secondly, When we speak of three estates in the constitution of our English government, 'tis most natural to mean and intend such a poize in the balance, or

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such an order or state, as hath a negative voice in the legislative power: For as the King and Commons excluding the Lords, so neither the King and Lords excluding the Commons, much less the Lords and Commons excluding the King, can make any law; but this glorious triplicity must be in mutual conjunction, and then from their united influences spring our happy laws. But in this sense, the Lords Spiritual by themselves have no pretence to be a distinct estate, that is, they have by themselves no negative voice, which I conceive the proper characteristic, or essential mark, of each of the three estates; for suppose a bill pass the Commons, and being brought into the Lords House, all the twenty-six Bishops should be against it, and some of the Temporal Lords; yet if the other Temporal Lords be more in number than the Bishops, and those that side with them, the bill shall pass as the act of the whole House; and if his Majesty please to give it his royal assent, is undoubted law: Which demonstrates the Bishops have of themselves no negative vote, and consequently are none of the three estates of this realm.

But there are those who deny this consequence, and affirm if they had a negative vote, it would have caused emulation and strife between them and the Temporal Lords; therefore when the order of Bishops was by the Princes of Christendom first erected into a succession of Nobility, they were not divided from the Temporal Noblemen in their great councils, for that would have made trouble and distraction in the affairs of Princes; and therefore it was a very wise constitution to unite them in one House, where they might hear their mutual reasons and debates, and by this means their resolutions would have the greater authority.

These two orders thus united, became two estates, which, together with the representatives of the Commons,



mons, make the third, and this we call a Parliament.

This agrees with all political constitutions in Europe, which come from the same Gothic original with England, and are founded upon the same model; as for instance, the empire of Germany is divided into three estates, of which the Emperor is Sovereign, the first of which estates is composed of the Spiritual Electors, together with the Archbishops, Bishops, Abbots, Priors, &c. The second is of Temporal Electors, Dukes, Marquisses, &c. and the rest of the Nobility. The third is of the imperial cities, of which there are about threescore, which are represented at the general Diets, by such Commissioners as they appoint for themselves.

There are likewise three estates in France, the Clergy, Nobility and Commons; and out of these three are chosen certain Commissioners for each estate, as often as the King shall require their meeting; and these, when met, do make what they call an *Assembly of the Estates*, much like our English Parliaments.

Spain is also divided into three estates, consisting of the Clergy, Nobility, and the Commissioners of the provinces, and most ancient cities, and their meeting is called *Cortez*, i. e. the chief or great Court.

The same division is there in Hungary, Sweden, and Denmark; and it seems very strange that the Lords Spiritual and Temporal should make but one estate here, when they make two every where else, in all kingdoms founded upon the same Gothic constitutions as England: Therefore it was a great improvidence in King Car. 1, who in his message to the Parliament from York, dated 17th of June, 1642, reckoned himself one of the three estates, and a member of the House of Peers, when it seems very plain that he presides over them.



And to make this matter a little more evident, we have several instances in our Parliament rolls, who these three estates are, viz.

After the funeral of H. 5 was performed, the three estates did assemble, and declared his son H. 6, then an infant, to be his heir, and their King.

The petition tendered to Richard Duke of Gloucester, to accept the crown, runs in the name of the three estates, viz. by the Lords Spiritual and Temporal, and Commons, assembled in this Parliament, and by authority of the same he was declared King.

So in the statute 1 Eliz. cap. 3, it is expressly said, the Lords Spiritual and Temporal, and Commons, in that Parliament assembled, did represent the three estates of this realm, and did recognize the Queen to be their lawful Sovereign.

And my Lord Coke, in his 4 Inst. published by order of the *long Parliament*, doth expressly affirm, that the Parliament consists of the head and the body, viz. that the King is the head, and that the body are the three estates, *i. e.* the Lords Spiritual and Temporal, and Commons; in which words we have not only the opinion of that oracle of the law, but of that Parliament by whose order his book was published.

*Touching the Power of the Parliament.*

THE jurisdiction of this Court, saith Coke, 1 Inst. sect. 164, is so transcendent, that it maketh, enlargeth, diminisheth, abrogateth, repealeth and reviveth, laws, statutes, acts and ordinances, concerning matters ecclesiastical, civil, martial, marine, capital, criminal and common. And 4 Inst. fol. 36, the power and jurisdiction of the Parliament for making of laws in proceeding by bill, is so transcendent and absolute,



absolute, as it cannot be confined, either for causes or persons, within any bounds. Of this Court it is truly said, "if you regard its original, it is most ancient; if its dignity, it is most honourable; if its jurisdiction, it is most capacious."

Sir Thomas Smith, a great statesman, and in high esteem and place under Queen Elizabeth, in his treatise *de Republica Anglorum*, lib. 2, cap. 2, gives this character of this supreme Court: "The most high and absolute power of the realm of England consisteth in the Parliament; for the Parliament abrogateth old laws, maketh new, giveth order for things past, and for things hereafter to be followed; changeth the rights and possessions of private men, legitimateth bastards, corroborates religion with civil sanctions, alters weights and measures, **PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN**, defines doubtful rights, where there is no law already made; appointeth subsidies, taxes and impositions; giveth most free pardons, restoreth the blood and name," &c.

As for the power of Parliaments over both statute and common law, take it in the accurate and significant words of a Parliament, viz. the statute of 25 H. 8, cap. 21, as follows: "Whereas this realm, recognizing no superior under God but the King, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and ordained within this realm, for the wealth thereof, or to such other as the people of this realm have taken at their free liberty, by their own consent, to be used amongst them; and have bound themselves, by long use and custom, to the observance of the same; not to the observance of the laws of any foreign *Prince, Potentate, or Prelate*, but as to the accustomed and ancient laws of this realm, originally  
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established as laws of the same by the said sufferance, consents and custom, and none otherwise. It standeth therefore with natural equity and good reason, that all and every such laws humane, made within this realm, or induced into this realm, by the said sufferance, consents and custom, the King, and the Lords Spiritual and Temporal, and Commons, representing the whole state of the realm, in the most high Court of *Parliament*, have full *power* and *authority* to dispense with these and all other humane laws of the realm, and with every one of them, as the quality of the persons and matter shall require: And also the said laws, and every of them, to abrogate, annul, amplify, or diminish, as to the King, Nobles, and Commons of the realm, present in Parliament, shall seem most meet and convenient for the wealth of the realm."

Thus far that notable statute, which in truth is only declarative, and in affirmance of the ancient common law of England.

*The particular Business of Parliaments.*

**B**Y what hath been said, you may perceive the work of an English Parliament is not, as some would have it, only to be keys to unlock the people's purses: That is but one part, and perhaps one of the least parts too, of their office. They are to propose new laws that are wanting for general good, and to press the abrogation of laws in being, when the execution of them is prejudicial or dangerous to the public. They are to provide for religion, and the safety and honour of the nation; they have a power, as you have heard from Sir Thomas Smith, to order the right to the crown; understand all this with the King's consent, and they have very frequently undertaken; and actually limited the same, contrary to, and different from the *common*  
line



*line of succession.* Nay by the statute of 13 Eliz. cap. 13, it is expressly enacted, "that if any person shall in any wise hold and affirm, or maintain, that the Queen, with and by the Parliament of England, is not able to make laws and statutes of sufficient force and validity to limit and bind the crown of this realm, and the descent, limitation, inheritance and government thereof; or that this present statute, or any part thereof, or any other statute to be made by the authority of the Parliament of England, with the royal assent, for limiting the crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient force and validity to bind, limit, restrain and govern all persons, their rights and titles, that in any wise may or might claim any interest or possibility, in or to the crown of England, in possession, remainder, inheritance, succession, or otherwise howsoever, and all other persons whatsoever, every person so holding, affirming, or maintaining, during the life of the Queen, shall be adjudged a high traitor, and suffer, and forfeit, as in cases of high treason is accustomed; and every person so holding, affirming or maintaining, after the decease of our said sovereign lady, shall forfeit all his goods and chattels."

Which clause, and last mentioned penalty, are still in force, and ought to be considered by those who now pretend that an act of Parliament cannot dispose the succession.

It has been objected that this act was made to serve a present turn, *i. e.* to keep the Queen of Scots, and her party, from attempting any thing against Queen Eliz. she pretending to be the next heir to the crown, and therefore the act declares, that it shall be treason, during the Queen's life, to maintain that she, by authority of Parliament, could not limit the succession of the crown: And as for the last clause, which makes it forfeiture



feiture of goods after her decease, that was only inserted to preserve her memory from being defamed with the crime of usurpation, which must have been the inevitable consequence of affirming that she and her Parliament could not limit the succession.

Besides there are those who affirm her best title was by act of Parliament, because her mother's marriage was declared unlawful by the act 28 of H. 8, and if the marriage was unlawful, the issue which proceeded from it must be so too.

It is likewise objected that this statute is expired, because in all the editions of the statutes since that time, the title of it is only mentioned with the letters following, EXP. which signifies *expired*.

But it is plain by the statute itself that it is not expired, for it is declaratory of the former laws and statutes made in other King's reigns, by which the succession of the crown had been settled upon those who were not the next heirs.

As for instance, upon the deposition of R. 2, the Parliament voted that H. 4 should be King, and thereupon he was placed by the Archbishop of Canterbury on the throne, though Edmund Earl of March was the next heir in right of blood.

So the Parliament settled the crown on H. 7, and the heirs male of his body, before he married the Princess Elizabeth, who was the next heir, by virtue of which settlement he held it all his reign.

Now the Parliament anno. 13 Eliz. reciting, that some doubts were made, whether the laws and statutes of this realm, remaining then in force, were sufficient for the safety and preservation of the Queen; therefore to clear these doubts they enacted, amongst other things, "that if any person should hold or affirm, that the common laws of this realm, not altered by Parliament, ought



ought not to direct the right of the crown of England, or that the Queen, by and with the authority of Parliament, is not able to limit and bind the crown, &c. that then," &c.

Every government hath a power to preserve itself, which is never more effectually done, than by preserving the laws of the nation, and the liberties of the people, that they may not be subverted by the next successor, who is an enemy to the established religion, and who would certainly alter it, by breaking through all laws which are made to guard it, and by making his subjects slaves.

But this power ought not to be exercised by any act of Parliament, but in such cases where the government is in danger by such a successor, if he should get into the throne.

And though some have affirmed, that by the *law of God and nature*, the succession of the crown is inseparably annexed to the next in blood, certainly those who are of this opinion do not consider that the laws of *God and nature* do not give a right or property to any man, because all property is of positive and human appointment: We claim our rights and liberties by the law of the land, it is that which tells us what is properly our own, and what is not; so that whatever right a man may have to a thing before there is a law to exclude him from it, it is very certain he hath none afterwards.

This was admitted even by the most zealous advocates against the bill of exclusion of the Pretender's father, who argued, that all those who had taken the oaths of allegiance, were obliged before God to defend him against all attempts whatsoever, *until he was disinherited by act of Parliament*, which was a concession that he might be disinherited; and the Parliament was of the  
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same opinion, who passed that bill; and it is very remarkable how unanimous they were in that opinion, for upon the first reading it in the House of Commons, there was not one man spoke against it but Secretary Jenkins, and there being no body to second him as it is usual, it was made a jest, that he ought to second himself.

By what has been said it is plain, that the succession of the crown has been directed by act of Parliament, in which the consent of the whole nation is virtually included by their representatives, so that it has been directed according to the presumed will of the people, which is collected from what is most expedient.

It is for this reason, that one daughter, sister, or female of the next degree, shall succeed, and not all, if there are more than one; whereas in private inheritances the estate is equally to be divided amongst all the females.

But it is the interest, and therefore the presumed will of the people, that the kingdom should not be divided, but united under one Prince; because the strength of the nation is thereby preserved, and the public peace better established.

So a son by the second venter shall succeed to the crown, because he is equally of the blood of his father, and from whom the expectation of the people is as great, being descended from him, to whom their allegiance and submission was once due; the same reason admits an *alien-born*, though he be a stranger to us by birth.

And here it may be proper to give a short historical account of the succession in England.

It is certain, when we had seven Kings here together, as in the Saxon reigns; there was no hereditary right.

Afterwards



Afterwards Alfred, Adelstane, Edmond the martyr, and Harold, though they were all bastards, were successively Kings here; but by a law under the Saxon monarchy, *de ordinatione regum*, bastards were prohibited to be chosen.

Edward the Confessor had no hereditary right, for that was in Edward the son of Edmond Ironside, father to Edgar Etheling his nephew, during his life, and after his decease, in that Edgar, who was nephew to the Confessor.

William the first was a bastard, and had no right; but the submission and election of the people made him King, after he had beaten Harold.

His son, William Rufus, had an elder brother living, whose name was Robert, when his brother was King.

And Henry the first succeeded, though his elder brother, the same Robert, was still alive.

King Stephen was chosen by the clergy and people, and his election was confirmed by the Pope, though Maud, the daughter of Henry the first, had the right, but she was excluded.

And Henry the second had no right, because the said Maud, who was his mother, and daughter and heir of Henry the first, was then living, and never made any formal resignation of her right.

King John had an elder brother, Jeoffry Earl of Britany, then living; which Jeoffry had issue Arthur and Eleanor, but neither of them succeeded H. 2.

H. 3 was King, though Eleanor, the daughter of Jeoffry, who was his father's elder brother, was then living.

Henry 4, upon the resignation, or rather deposing Rich. 2, was made King; it is true he claimed a right as heir to Edmond, surnamed Crouchback, brother



to King Edward the first, which Edmond was the eldest son of Henry the third, and put by because he was deformed; all which was false; for if it had been true, it would have given him a good right, not only against Richard the second, but against his own grandfather. Edward the third, had he then been living.

But the King himself, after he got on the throne, would not trust to his pretended hereditary title, but thought a parliamentary title to be better; and therefore in the eighth year of his reign, he procured the crown to be settled upon himself, and upon all his sons by name, and to the right heirs of their bodies; and this was the first act of Parliament which was made for entailing the crown.

It is true, Henry fifth and sixth were lineally descended from him; but I do not find that they ever claimed by any hereditary right; but by virtue of this entail, under which it was enjoyed for three descents, for the space of above sixty years.

As to Henry 2, though his reign was in very unsettled times, occasioned by the wars between him and Edward 4, who were alternatively Kings in each other's lifetime, yet it may not be unacceptable to the reader, to give him this short account of it.

The Duke of York and Earl of Warwick raised an army, and took him prisoner at the battle of Northampton; he was brought from thence to London, and a Parliament was called in his name, but without his consent; in which he claimed a right to the crown: None of King Henry's Council would plead his cause, and the Judges could hardly be prevailed on in the House of Lords to say any thing against the title of the Duke, and so he was declared Protector.

But



But the Queen and her son having renewed the war, they took the Duke of York prisoner at the battle of Wakefield, and there he was killed; but his son Edward Earl of March, afterwards Edward 4, returning from beyond sea with some forces, and being assisted here by the Earl of Warwick, took Henry 6 prisoner at the second battle of St. Albans, and marching to London, declared himself King, and then calling a Parliament, he was so declared, and that Henry 4, 5, and 6, were usurpers.

But the Earl of Warwick, who had assisted this King against Henry 6, and now turning against him after he had reigned ten years (in all which time Henry 6 was kept prisoner) replaced him once more on the throne, and then he called a Parliament, which repealed all the statutes of Edward 4, and entailed the crown upon his issue remainder to the Duke of Clarence, who was brother to King Edward 4, and yet fought against him.

Afterwards King Edward 4 regained the crown, and then Henry 6 was murdered, together with his son Prince Henry; and in the next Parliament, he and all his party were attainted of treason; and one principal reason for it was, because the Duke of York, who was the father of Edward 4, had been declared heir to the crown by act of Parliament, after Henry 6 had been killed by them at the battle of Wakefield, which act was repealed 1 Hen. 7.

After the death of King Edward 4, the next in succession was Ed. 5, who claimed by virtue of the aforesaid entail, made in the reign of H. 6; but he was deposed by his uncle Richard, Duke of York, who was the youngest brother of Ed. 4, pretending that all the children of his said brother were bastards, because of a precontract made by him with the Lady Eleanor Botelor,



Botelour, before he married Elizabeth his Queen, and that the blood of his eldest brother, George Duke of Clarence, was attainted, by act of Parliament, in the reign of Ed. 4, for being in rebellion, and siding with Hen. 6 against his own brother as aforesaid, so that none of the lineal blood of Richard Duke of York now remained uncorrupted besides himself, who was his third son, and thereupon,

Richard 3 was crowned, and immediately afterwards he called a Parliament, in which his right and title were recognized and declared to be just and lawful, and grounded upon the ancient laws of the realm, and therefore he was declared King, as well by inheritance as by lawful election, consecration and coronation.

But not trusting to his title by inheritance, having bastardised and attainted his nephews as aforesaid, the Parliament proceeds in this manner, viz. “nevertheless, for that most part of the people are not sufficiently learned in the laws, and therefore lest his right should be put in doubt and question, and for that the Parliament is of such authority, that a declaration made by the three estates may remove these doubts, therefore they declare him King,” &c.

From which act it is plain, that Parliament supposed the generality of the people not capable to understand the laws upon which the King's title was founded, and therefore the surest way was to rest upon the judgment of their representatives in Parliament.

Henry 7 succeeded after Richard 3 was killed at the battle at Bosworth, but he did not claim by the lady Elizabeth his Queen, who was daughter of Ed. 4, for fear he should be a King only by courtesy, and so be set aside if he should survive her, who had the title by inheritance; but he trusted upon a parliamentary right, which he had by virtue of the entail made in the reign of H.



6, as aforesaid; and before he married the right heir, the Princess Elizabeth, his title was acknowledged by the Parliament, not by declaration, or recognition of right, but in these words, viz. "that the inheritance of the crown should rest, remain, and abide to him, and to the heirs of his body, lawfully coming, perpetually," which words might be applied thus, viz. to him, whether as having a former right, which was very doubtful, or to *him*, who had then the possession, which could not be denied.

And it is observable, that after the death of Queen Elizabeth, Hen. 8, who was her son, pretended to no manner of title during his father's life, as being son and heir of his mother, who had the title by the course of succession.

Henry 8 succeeded, but it was never declared by what title, and there was no occasion for it, because he was heir both to his father and mother, and the inheritance was certainly in one of them, for his father was heir to the house of Lancaster, and his mother of the house of York.

In the 25th of his reign, the marriage between him and Catharine his Queen was declared unlawful, and the crown was settled by act of Parliament on him and the heirs of his body, by Anna Bullen, his then Queen.

Anno. 35 H. 8 the crown was again entailed upon Prince Edward and the heirs of his body, remainder upon the Lady Mary, and the Lady Elizabeth, in like manner; and by the said act, power was given to him *to dispose of it by letters patent, or by his last will*, either in remainder or reversion, and to such person or persons as he should please, after his three children, Edward, Mary and Elizabeth, should die without issue; in which act it is made high treason to speak or write against this settlement,



settlement, or to go about to repeal it: And likewise a proviso, that if the Lady Mary should not keep such conditions which the King should declare by his letters patent, or last will, that then the crown should come to the Lady Elizabeth; and if she should not observe the same, then it should go to such person as the King should appoint.

These acts were confirmed by the oaths of the people, and it was made high treason to refuse such oaths, and several persons were attainted in his reign, by several acts of Parliament, for opposing such limitations of the crown, and the authority of the laws by which they were made.

Edward 6 succeeded, who had both an hereditary and parliamentary right.

But Queen Mary his sister and successor had no hereditary right, because she was declared illegitimate by act of Parliament, anno. 25 H. 8, so that she must succeed by virtue of the entail made anno. 35 H. 8.

It is true, in the first year of her reign she took off the act by which she was declared illegitimate; but it is as true, that the act 35 H. 8, by which the crown was entailed on her, was not actually repealed in all her reign, though by another act of Parliament, made to confirm the marriage articles between her and King Philip, the crown was again entailed: But she dying without issue,

Queen Elizabeth her sister succeeded, and her title was apparently by the act of entail made in the 35th year of her father's reign; for she never got her mother's marriage to be declared lawful.

Besides she was born whilst Catharine her father's first wife was living, and though the Parliament, in the first year of her reign, declared her *rightfully, lawfully, and lineally descended of the royal blood*, that must be intended,  
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of a *lawful* and *lineal descent*, according to the aforesaid acts of settlement, for it could not be a *lawful* and *lineal descent* at common law.

It was pursuant to these precedents in fact, that in the 13th year of her reign, that act of Parliament was made which hath been before mentioned, and by which the power of Parliaments is declared to limit the succession of the crown. But she dying without issue,

King James succeeded, who had a certain title, though it is not mentioned in the act of recognition; whether it was from H. 7 alone, or from Elizabeth his wife, or from both, the act only declares, that he was lawfully descended from Margaret, the eldest daughter of H. 7, and Queen Elizabeth his wife, the eldest daughter of Ed. 4, and therefore they were bound, both by the laws of God and man, to recognize him sole heir of the blood royal.

Now by the laws of God and man must be understood, such laws which God impowers the King to make; for there is no *divine right of succession to kingdoms* appointed by the laws of God, any more than to other inheritances whatsoever. Nor was any succession by right of blood alone ever established by any positive law of man, or settled by any constant or uninterrupted custom.

So that notwithstanding this act of recognition, King James's title may be said to be derived from the act of settlement, made on King Henry the 7th, from whom he was lineally descended; and though his pedigree be also derived from Queen Elizabeth, that was only to shew, that he had every way a good title; for though she was eldest daughter to Ed. 4, yet she had a title by the before mentioned acts of settlement, in the 39th year of H. 6, and 1 Ed. 4, by which the crown was vested in Richard Duke of York, who was the father  
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of Ed. 4, and grandfather of the said Elizabeth, but killed by H. 6, at the battle of Wakefield aforesaid; by which last act, all the Henries of the house of Lancaster were declared Kings *de facto*, and not *de jure*, there being never any such distinction made before; for whenever a King was crowned and acknowledged by the Parliament, he was esteemed King in point of right.

It is true, that ever since the reign of Ed. 1, the crown has been claimed by an hereditary right; but it is as true that it hath been enjoyed by Princes, who had no just pretence to such title; for the Parliament, notwithstanding such claims, have declared those to be Kings whom they knew had no such right, and they have always been taken to be lawful Kings, because their laws are binding to this day, though never confirmed by any of their successors, who had a title by any such right; so that all the subsequent acts for entailing the crown, are so many plain and evident recognitions, what the fundamental constitution of the English government was, in that great point of succession, &c.

**A**ND now, to divert my reader a little with what provision the Parliament of England hath made, for settling the crown upon the head of a Protestant Prince, whereby the rights and liberties of Englishmen may be defended from the usurpations of tyranny and arbitrary power, I shall insert the declaration, &c. presented to their Majesties by the Lords Spiritual and Temporal, and Commons, assembled in Parliament, upon their accession to the throne.

**W**HEREAS the late King James the Second, by the assistance of divers evil Counsellors, Judges, and Ministers, employed by him, did endeavour  
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vour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom, by assuming and exercising a power of dispensing with, and suspending of laws, and the execution of laws, without consent of Parliament: By committing and prosecuting divers worthy Prelates, for humbly petitioning to be excused from concurring to the said assumed power; by issuing, and causing to be executed, a commission under the great seal, for erecting a Court, called *the Court of Commissioners for ecclesiastical causes*: By levying money for and to the use of the crown by pretence of prerogative, for other time, and in other manner, than the same was granted by Parliament: By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law: By causing several good subjects, being Protestants, to be disarmed at the same time, when Papists were both armed and employed, contrary to law: By violating the freedom of election of members to serve in Parliament: By prosecutions in the Court of King's Bench, for matters and causes cognizable only in Parliament; and by divers other arbitrary and illegal courses.

And whereas of late years, partial, corrupt, and unqualified persons have been returned, and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders: And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects: And excessive fines have been imposed; and illegal and cruel punishments inflicted; and several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied: All which are utterly and directly contrary to the known  
P 2 laws



laws and statutes, and freedom of this realm. And whereas the said late King James the second, having abdicated the government, and the throne being thereby vacant, his Highness the Prince of Orange, whom it hath pleased almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power, did, by the advice of the Lords Spiritual and Temporal, and divers principal persons of the Commons, cause letters to be written to the Lords Spiritual and Temporal, being Protestants; and other letters to the several counties, cities, universities, boroughs and cinque-ports, for the choosing of such persons to represent them, as were of right to be sent to Parliament, to meet and sit at Westminster, upon the two-and-twentieth day of January, in the year one thousand six hundred eighty-and-eight, in order to such an establishment, as that their religion, laws and liberties, might not again be in danger of being subverted: Upon which letters elections have been accordingly made.

And therefore the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place, as their ancestors in like case have usually done, for the vindicating and asserting their ancient rights and liberties, declare that the pretended power of suspending of laws, or the execution of laws by regal authority, without consent of Parliament, is illegal. That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal. That the commission for erecting the late Court of Commissioners for ecclesiastical causes, and all other



other commissions and courts of like nature, are illegal and pernicious. That levying money for or to the use of the crown, by pretence of prerogative, without grant of Parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal. That the raising or keeping a standing army within this kingdom in the time of peace, unless it be with consent of Parliament, is against law. That the subjects which are Protestants, may have arms for their defence, suitable to their conditions, and as allowed by law. That election of members of Parliament ought to be free. That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. That jurors ought to be duly impannelled and returned, and jurors which pass upon men in trials for high treason, ought to be freeholders. That all grants and promises of fines and forfeitures of particular persons, before convicted, are illegal and void. And that for redress of all grievances, and for the amending, strengthening, and preserving the laws, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties: And that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter in consequence or example. To which demand of their right, they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having



Having therefore an entire confidence, that his said Highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights which they have here asserted, and from all other attempts upon their religion, rights and liberties, the said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and Mary, Prince and Princess of Orange, be, and be declared King and Queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and dignity of the said kingdoms and dominions, to them the said Prince and Princess, during their lives, and the life of the survivor of them: And that the sole and full exercise of the regal power be only in, and exercised by the said Prince of Orange, in the name of the said Prince and Princess, during their joint lives: And after their decease the said crown and royal dignity of the said kingdoms and dominions, to be to the heirs of the body of the said Princess: And for default of such issue, to the Princess Ann of Denmark, and the heirs of her body: And for default of such issue, to the heirs of the body of the said Prince of Orange. And the Lords, Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly. And that the oaths hereafter mentioned, be taken by all persons of whom the oath of allegiance and supremacy might be required by law, instead of them: And that the said oaths of allegiance and supremacy be abrogated.

“ **I** A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to their Majesties King WILLIAM and Queen MARY. So help me God.”

“ I A. B.



**I** A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever.

“And I do declare, that no foreign Prince, person, Prelate, State or Potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. *So help me God.*”

But nothing is more properly the business of Parliaments, than to redress grievances, to take notice of monopolies and oppressions, to curb the exorbitances of great favourites and pernicious Ministers of State, to punish such mighty delinquents who are protected by the King, and look upon themselves too big for the ordinary reach of justice in the courts of common law; to inspect the conduct of such who are intrusted with the administration of justice, and to interpret the laws to the prejudice of the people, and those who dispose the public treasure of the nation.

All crimes of these and the like kinds are public nuisances, and wound the body politic in a vital part, and can scarce be found out, or when found, can scarce be redressed, but in this great Assembly, before whom the most insolent criminals tremble; and it has been observed, that they seldom prosecute any such persons, but sooner or later they convict them, though they are in the greatest favour of the King.

As for instance, Ed. 2 doated upon his favourite Pierce Gaveston, a Frenchman; he wasted the King's treasures, he had honours conferred on him, and riches, but without any merit; he affronted the Nobility, presuming upon the favour and indulgence of the King.



King. The Parliament in the beginning of his reign made their complaint, and thereupon he was banished into Ireland; the King afterwards calls him home, and marries him to the Earl of Gloucester's sister; the Lords complain again so effectually, that the King not only consents to his second banishment, but that if ever he returned, or were found in the kingdom, he should be held and proceeded against as an enemy to the state. Yet back he comes, and is received once more by the King as an angel, who carries him with him into the north, and hearing the Lords were in arms to bring the said Gaveston to justice, plants him for safety in Scarborough castle, which being taken, his head was chopped off.

In King Richard the second's time, most of the Judges of England, to gratify certain corrupt and pernicious favourites about the King, being sent for to Nottingham, were, by persuasions and menaces, prevailed with to give false and illegal resolutions to questions proposed by them, declaring certain matters to be treason, which in truth are not so; for which, in the next Parliament, they were called to account, and attainted; and Sir Robert Tresilian, Lord Chief Justice of England, was drawn from the Tower through London to Tyburn, and there hanged: As likewise was Blake, one of the King's Council, and Uske, the Under Sheriff of Middlesex, who was to pack a jury to serve the present turn, against certain innocent Lords, and others, whom they intended to have taken off; and five more of the Judges were banished, and their lands and goods forfeited. And the Archbishop of York, the Duke of Ireland, and the Earl of Suffolk, three of the King's evil Counsellors, were forced to fly, and died miserable fugitives in foreign parts.



In the beginning of the reign of King H. 8, Sir Richard Empson, Knight, and Edmond Dudley, one of the Barons of the Exchequer, having, by colour of an act of Parliament to try the people for several offences, without juries, committed many oppressions, were proceeded against in Parliament, and lost their heads.

In the 19th year of the reign of King James, at a Parliament holden at Westminster, there were shewn two great examples of justice; which for future terror are not unfit to be here related; one upon Sir Giles Mompesson, a gentleman otherwise of good parts; but, for practising fundry abuses, in erecting and setting up new inns and ale-houses, and exacting great sums of money of people, by pretence of letters patent granted to him for that purpose, was sentenced to be degraded from his Knighthood, and disabled to bear any office in the commonwealth, though he avoided the execution by flying the land: But upon Sir Francis Mitchel, a Justice of the Peace of Middlesex, and one of the chief agents, the sentence of degradation was executed, and he made to ride with his face to the horse-tail through the city of London. The other example was of Sir Francis Bacon, Viscount St. Albans, Lord Chancellor of England, who for bribery was put from his place, and committed to the tower.

In King Charles the first's time, most of the Judges that had given their opinions contrary to law, in the case of ship money, were called to account, and forced to fly for the same. And in the 19th year of King Charles 2, the Earl of Clarendon, Lord Chancellor of England, being questioned in Parliament, and retiring thereupon beyond the seas, was by a special act banished and disabled. In a word, it was well and wisely said of that excellent statesman, Sir William Cecil, Lord Burleigh, and High Treasurer of England, "that he knew not what an act of Parliament might  
Q not



not do ;” which apothegm was approved by King James, and alledged, as I remember, in one of his published speeches.

And as the jurisdiction of this Court is so transcendent, so the rules and methods of proceeding there are different from those of other Courts. For saith Coke, 1 Inst. fol. 15, “ as every Court of Justice hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c. so the High Court of Parliament subsists by its own peculiar laws and customs.” It is *lex et consuetudo Parliamenti*, the law and custom of Parliament, that all weighty matters in any Parliament moved concerning the Peers, and Commons in Parliament, ought to be determined, adjudged and discussed, by the course of the Parliament, and not by the civil law, nor yet by the common laws of this realm used in more inferior Courts, which was so declared to be *secundum legem et consuetudinem Parliamenti*, according to the law and custom of Parliament, concerning Peers of this realm, by the King, and all the Lords Spiritual and Temporal, and the like is for the Commons, for any thing moved or done in the House of Commons: And the rather, for that by another law and custom of Parliament, “ the King cannot take notice of any thing said or done in the House of Commons, but by the report of the House: And every member of the Parliament hath a judicial place, and can be no witness. And this is the reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by common law, but *secundum legem et consuetudinem Parliamenti*, according to the law and custom of Parliament: And so the Judges in divers Parliaments have confessed. And some hold, that every offence committed in any Court punishable by that Court, must be punished, proceeding



proceeding criminally, in the same Court, or in some higher, and not any inferior Court, and the Court of Parliament hath no higher." Thus Coke.

In the reign of King Charles 2, great complaints were made about the House of Commons sending for some persons into custody by their Serjeant at Arms; but certainly they did no more therein than what their predecessors have often done; every Court must be supposed armed with a power to defend itself from affronts and insolencies: In all ages, when the House has appointed particular committees, hath it not been usual to order, that they shall be impowered to send for papers, persons and records? But to bring men to a sober consideration of their duty and danger, I shall give a few instances, besides those before mentioned, of what the House of Commons hath done in former ages.

1. Anno. 20 Jacobi, Dr. Harris, Minister of Bletchingly, in Surrey, for misbehaving himself by preaching and otherwise, about election of members of Parliament, upon complaint, was called to the bar of the House of Commons, and there, as a delinquent, on his knees, had judgment to confess his fault there, and in the country, in the pulpit of his parish-church, on Sunday before sermon.

2. Anno. 21 Jacobi, Ingrey, Under Sheriff of Cambridgeshire, for refusing the poll, upon the promise of Sir Thomas Steward to defend him therein, kneeling at the bar, received his judgment to stand committed to the Serjeant at Arms, and to make submission at the bar, and acknowledge his offence there; and to make further submission openly at the quarter sessions, and there also to acknowledge his fault.

3. Anno. 20 Jacobi, the Mayor of Arundel, for misbehaving himself in an election, by putting the



town to a great deal of charge, not giving a due and general warning, but packing a number of electors, was sent for by a warrant, and after ordered to pay all the charge, and the House appointed certain persons to adjust the charges.

4. And 3 Car. 1, Sir William Wray, and others, Deputy Lieutenants of Cornwall, for assuming to themselves a power to make whom they pleased Knights, and defaming those gentlemen that stood to be chosen, sending up and down the country letters for the trained bands to appear at the day of election, and menacing the country, under the title of his *Majesty's pleasure*, had judgment given upon them, 1. To be committed to the Tower. 2. To make recognition of their offence, at the bar of the House, upon their knees, which was done. 3. To make recognition and submission at the assizes in Cornwall, in a form drawn by a committee.

But most remarkable are the proceedings against Dr. Manwaring, in the Parliament, anno. 1628. This man was then Vicar of St. Giles's in the Fields; his crime was for preaching two sermons, in which he asserted, "that the King might impose taxes and subsidies on the people without consent of Parliament, and that they were bound to pay taxes under pain of damnation, which if they refused to do, they were guilty of disloyalty and rebellion."

Dr. Heylin, though he was a very zealous advocate for absolute monarchy, and an enemy to the power and privileges of Parliaments, yet he made but a very slender excuse for this Vicar; for he tells us, he spoke no more in the pulpit than Serjeant Hele did in the Parliament, in the 43d year of the Queen, who affirmed, "that he wondered the House stood, either at granting a subsidy, or at a time of payment, since all we have is her Majesty's, and she may lawfully at her pleasure  
take



take it from us, and that she had as much right to all our lands and goods as to any *revenue of the crown*, and that he had precedents to prove it:" For which words he tells us the Serjeant was never questioned, but that poor Manwaring was sentenced to his absolute ruin, if the King had not been more merciful to him than the Commons.

But I can tell him when the like doctrine was preached before that time, I mean before the reign of Charles I, and though the preacher was not punished, yet his sermon was censured by the Parliament; and this was Dr. Harpsnett, Bishop of Chichester, about the middle of King James's reign, who preaching upon this text, *i. e.* "render unto Cæsar the things which are Cæsar's," he affirmed, "that all the subjects goods and money were the King's, and therefore were not to be denied him, if he demanded them for the public use."

The Parliament ordered this sermon to be burnt by the common hangman; but the doctrine was so pleasing to the Court, that this Bishop was afterwards translated to Norwich, and thence to the Archbishoprick of York.

So likewise this Manwaring, though he was sentenced by the Parliament (as you may see by what follows) yet after it was dissolved, he was first presented by the King to a rich benefice in Essex, and afterwards made Bishop of St. David's.

But having before these preferments been charged with preaching and publishing this slavish doctrine, it was referred to a committee to enquire into the same, who brought in their report, which was delivered to the House with this speech:

*Mr. Speaker,*

I AM to deliver from the sub-committee a charge against Mr. Manwaring, a preacher and Doctor of Divinity, but a man so criminous, that he hath turned his



his titles into accusations; for the better they are, the worse is he, that hath dishonoured them. Here is a great charge that lies upon him, it is great in itself, and great because it hath many great charges in it: *Serpens qui serpentem devorat, fit draco*; his charge having digested many charges into it, is become a monster of charges. The main and great one is this, *a plot and policy* to alter and subvert the frame and fabric of this state and commonwealth. This is the great one, and it hath others in it that gain it more greatness: For to this end he labours to infuse into the conscience of his Majesty, the persuasion of a *power* not bounding itself with laws, which King James, of famous memory, calls in his speech in Parliament, 1619, *tyranny*, yea, *tyranny accompanied with perjury*.

2. He endeavours to persuade the consciences of the subjects, that they are bound to obey illegal commands, yea, he damns them for not obeying them.

3. He robs the subjects of the property of their goods.

4. He brands them that will not lose this *property*, with most scandalous and odious titles, to make them hateful both to *Prince* and *people*, so to set a division between the heads and members, and between the members themselves.

5. To the same end (not much unlike to Faux and his fellows) he seeks to blow up *Parliaments* and *parliamentary power*. These five being duly viewed, will appear to be so many charges, and withal they make up the main and great charge, a mischievous plot to alter and subvert the frame and government of this state and commonwealth. And now that you may be sure that Mr. Manwaring, though he leave us no property in our goods, yet he hath an absolute propriety in his charge, *audite ipsam belluam*, hear Mr. Manwaring by his own words making up his own charge.

Here



Here he produced the books, particularly insisting on p. 19, 29 and 30, in the first sermon, p. 35, 36 and 48, in the second sermon; all which passages he heightened with much eloquence and acrimony, thus concluding his speech, "I have shewed you an *evil tree*, that bringeth forth *evil fruit*; and now it rests with you to determine, whether the following sentence shall follow, *cut it down, and cast it into the fire.*"

Four days after the Parliament proceeded to his censure, consisting of eight particulars, it being ordered by the House of Lords against him, as followeth:

1. To be imprisoned during the pleasure of the House.

2. To be fined a thousand pounds.

3. To make his submission at the bar in this House, and in the House of Commons, at the bar there, *in verbis conceptis*, a set form of words framed by a committee of this House.

4. To be suspended from his ministerial function three years, and in the mean time a sufficient preaching man to be provided out of the profits of his living, and this to be left to be performed by the ecclesiastical Court.

5. To be disabled for ever hereafter from preaching at Court.

6. To be for ever disabled of having any ecclesiastical dignity in the church of England.

7. To be incapable of any secular office or preferment.

8. That his books are worthy to be burnt, and his Majesty to be moved, that it may be so in London, and both the Universities.

And accordingly he made his submission at the bar of both Houses on his knees, on the 23d of June following, with these outward expressions of sorrow, as follow:

"I do



“ I do here in all sorrow of heart, and true repentance, acknowledge those many errors and indiscretions which I have committed, in preaching and publishing the two sermons of mine, which I called Religion and Allegiance, and my great fault in falling upon this theme again, and handling the same rashly, scandalously and unadvisedly, in my own parish-church in St. Giles’s in the Fields, the fourth of May last past. I humbly acknowledge these three sermons to have been full of dangerous passages and inferences, and scandalous aspersions in most parts of them. And I do humbly acknowledge the just proceedings of this honourable House against me, and the just sentence and judgment passed upon me for my great offence. And I do, from the bottom of my heart, crave pardon of God, the King, and this honourable House, and the common weal in general, and those worthy persons adjudged to be reflected upon by me in particular, for these great offences and crimes.”

But the Vicar of St. Giles’s was not the only man that preached this doctrine; for the year before one Doctor Sibthorpe, preaching an assize sermon at Northampton, on Rom. iii. 7, affirmed, “ that the King alone made the laws, and that nothing could excuse from the active obedience to his commands, but what is against the law of God and nature; and that the King had power to lay poll money upon his subjects heads.”

This sermon was printed with the title of Apostolical Obedience; but Archbishop Abbot refused to license it, because this doctrine was contrary to law; for which the Court did not thank him, for it was supposed one of the chief causes of his suspension; but it was licensed by Bishop Laud, after some passages concerning the profanation of the sabbath, and toleration of Popery, were expunged; but this man, though he lived many years afterwards,



erwards, and even to the King's return, was never preferred any higher than to the parsonage of Brackly, and another living in the county of Northampton.

The truth is, it is the High Court of Parliament that only can hinder the subject from being given up as a prey to the arbitrary pleasure not only of the Prince, if he should attempt it, but, which is ten times worse, to the unreasonable passions and lusts of favourites, chief ministers, and women; when otherwise, instead of a Monarch, who, as sometimes it may happen, shall govern but in name, we might be ruled like the ancient French, by an insolent *Mayor of the Palace*, who will be sure to mind the private interest of himself and family, more than that of the Prince, or the public good: or like the Turkish Empire under a weak Grand Seignor, by the prevailing concubine of the seraglio, who is perhaps herself managed by no other dictates than those of her chief eunuch, or the slave. It is strange therefore to observe the impotent ambition of some men, and such, with shame let us speak it, boast themselves Englishmen too, who, provided they may trample upon and domineer over their inferiors, care not how much their superiors do the like over them. Their souls, like most insolent men's, being mean enough to submit thereunto: Or, who can enough deplore and abhor the ignorance and stupidity of some lazy insignificant gentlemen, who care not how things go, provided they may enjoy their hawks, hounds, and bowling-green meetings; whilst not only for divinity, but politics too, they are governed by their impertinent chaplain, or the parson of their parish? Now nothing is more obvious than the designs of some idle, covetous, sycophant clergymen, who, like ivy, though it cannot grow without the support of the oak, and yet will destroy it at last, do private parlours over the glass, whilst healths go round,



as well as in their pulpits over their cushions, set up absolute monarchy to be *jure divino*, declaiming against the unreasonable stubbornness of any Parliament that will not give away the people's money, and submit themselves to be fleeced, as often as the Prime Minister or favourite think fit: They cry up the Prince like an angel, so long as he will be their executioner, to whip, imprison, or hang all that will not truckle to their own pride and avarice; or refuse to give up their souls once again to be managed by an implicit faith, whereby in the mean while these *Huffish Jacks* might not be troubled with those uneasy tasks of *studying, preaching, &c.* but may have nothing else to do, but live at ease, keep their coach and horses, with a silly curate to do all the drudgery; whilst they themselves are making addresses above, by flattering and informing at some great Nobleman's or Bishop's table, and railing against the Whigs and Fanatics, and speaking a good word for Popery by the bye: Or else, if their parts reach so high, by some *Socinian* pamphlet, or sermon against the government established by law, they teach, that men have no property in their lives and goods, but only during the Prince's pleasure, &c. If there be not such a parcel of things as these that call themselves divines, then no body is concerned in this character; but if there be, they are the worst of men, and ought not only to be exposed, but severely punished.

Therefore since at present we live under so happy a government, where being securely landed ourselves, we behold the shipwreck of our neighbours; it is therefore the indispensable interest and duty of all true Englishmen, to maintain these privileges, conveyed from their ancestors through so many generations inviolable, upon which all our earthly, and in a great measure our spiritual happiness,



happiness, safety, and well-being depend. Nor can any man in his senses but acknowledge, that the only way to attain that end, is to look well to the means, and that is, by taking due care what persons they choose for their representatives, with whom they must trust their estates, lives and liberties.

Now this government of a Prince by and with Parliaments, whenever the condition and necessities of the state require them, however according to its primitive institution it was the best of all others; yet as well in that as in Christianity itself, there have been found out ways of corruption, and that is, when either they sit too long or too seldom, or are too frequently dissolved; too frequent dissolutions being no less dangerous to the subject than too long sessions. Nevertheless it may be in the electors power to avoid the inconvenience of both, and that is, by making a good choice.

Whereas if the country people will sell all that they have for a little roast beef, a glass of sack, and a pot of ale, choosing him that will give them most drink to-day, though they know him to be a person who will sell both their religion, liberties and fortunes, to-morrow, then frequent dissolutions will of necessity ruin us, and utterly debauch this excellent constitution; for the honest country gentleman, designing no other private advantage, but the true service of the King and his country, hath no reason, nor is he able, once in half a year, to spend 4 or 500 l. only to purchase a place full of labour, charge, trouble and danger, without any profit to himself, only to serve those who put him to such an unkind expence. And when honest loyal gentlemen are thus discouraged, if this sottish humour amongst the electors continue, the Papists and their faction, or dissolute persons of prostituted consciences, will carry their votes; for they can afford to buy them at large rates,



rates, being resolved to repay themselves, though with the ruin of the nation.

This is no vain surmise or idle speculation, but the very truth of the case; and the meanest countryman that has his eyes in his head, and will use them, cannot but see it: For did you ever know a coachman or groom buy his place, unless he designed to rob his master's bin? Therefore, whoever you put to charge in your elections, blame him not if he makes money of what he bought, and lays out his vote in the House not for your good, and that of the public, but that way as will best please the Ministers of state, that so he himself may get a good place or preferment, or title of honour, by the bargain. I say, though he himself be a base wretch for so doing, yet you cannot blame him, since you did not lend him your trust, but sold it him; and what a man hath purchased with his money, he may lawfully sell again.

Therefore that man who does wilfully give his voice for one disaffected, does his endeavour to ruin both his country, himself and his posterity, and to be as bad, or worse, than the person he chooses; and if the greater part of the House happen to be wiser or honest, it is no thanks to him; he did as much as he could to debauch it; and therefore for his part, if none else were concerned with him, it were no matter if he were forthwith made a *slave*, and his children *perpetual vassals*.

The before mentioned Lord Treasurer Burleigh, who is thought to have been the greatest Statesman that ever this nation bred, did frequently deliver as a maxim, or rather as a prophecy, *that England can hardly be ruined, unless it be by her own Parliament*; undoubtedly foreseeing that other oppressions, being wrought by violence, might perhaps by violence be in time shaken off again; whereas, when in a parliamentary way we are undone  
by



by a law, that can never be reversed but by a downright rebellion, because the parties advantaged by that law, will never agree to the repealing of it; and a rebellion is both so dangerous, and of so black a character, as men either rich or conscientious will not engage therein; and therefore no public mischief is so irrecoverable, as that which is grown into a law; and nothing, you know, can become so, but what is imposed on you by Parliament. Such is the happy frame of your government, so prudently and strongly have your ancestors secured property and liberty, rescued by inches out of the hands of incroaching violence, that you cannot be enslaved, but with chains of your own making; for as you are never undone till you are undone by law, so you can never be undone by a law, till you choose the undoing legislators; and may not your enemies add *scorn* to their *cruelty*, and pretend justice for both, when they can plead, they had never trampled on your heads, had you not laid them on the ground?

From what has been said, it evidently appears, of what vast importance it is at all times, whenever his Majesty shall be pleased to issue out his writs for a Parliament, to choose (as much as in us lies) a good House of Commons, as we tender our religion, liberties, estates and posterity; upon our well or ill choosing depends our well or ill being; 'tis here as in marriage or war, there is no room for second errors; one act may ruin a nation beyond retrieve.

Besides, they whom you choose will represent the qualities as well as the persons, and if you send up a false glass, it would represent you with an ugly face; you have hitherto had the repute of an ancient and grave people; but if you choose raw saplings, green heads, unexperienced children, the world will judge  
of



of you as they once did of the Grecians, that you were either always children, or are grown twice so; you have long been a famous, religious, Protestant nation; but if you choose debauched, swearing Atheists, men of no religion, or such as are meer Formalists, or inclinable to Popery, what can the world think, but that the nation has lost its sense of religion, and is contented to be led back into the Egyptian darkness of Romish poperies? You have formerly had the character of a sober, temperate nation; but if you choose drunkards for your trustees, or give your voices for those that gorge you most with liquor, what can be supposed, but that you are already drunk with folly, and just reeling into slavery?

*Some Directions concerning the Choice of Members to serve in Parliament, and the Qualifications that render a Gentleman fit or unfit, worthy or undeserving of your Voices for so great a Trust.*

I. **A**VOID all such as hold any office of considerable value during pleasure, they being subject to be over-awed. For although a man wish well to his country, and in the betraying thereof, knows at the long run he mischiefs and enslaves his posterity, if not himself; yet the narrowness of mens minds is such, as makes them more tenderly apprehend a small present damage, than a far greater hereafter. Such men must of necessity be under a great temptation and distraction, when their consciences and interest look different ways. For to say truth, such an office is but a softer word for a pension: Therefore since these men know before-hand the inconveniences that attend the trust of a member of Parliament faithfully discharged, it is very suspicious and reflecting upon their honesty, if any such stand for it: And I think we are bound in charity, nor can we do them



them a greater courtesy, than to answer their petition in the Lord's prayer, *not to lead them into temptation.*

2. Suspect all those (especially if they be men of ill repute) who in their profession, or near relations, have dependency upon the Court. For though to be the King's servant is no bar from being Parliament man, or from serving his country honestly in that station, and no doubt several of them have, at divers times, well discharged the same; yet frequently such persons, unworthily guessing at their Prince by themselves, are apt to vote right or wrong, as they imagine will most please the prerogative party; and it is an hard matter for a courtier to please that great Statesman and Minister who supports him, and those whom he represents at the same time; and if he endeavours to oblige both, he becomes such an uncertain weathercock, as most commonly he obliges neither. And therefore the most prudent and honest of the courtiers are always observed to decline being Parliament men for this very reason.

3. Meddle not with such as have been or are like to prove pensioners, or receive salaries for secret services. I know they would some time since brazen it out, that there were no such men, no such practices, but the contrary is notorious: Did not the House of Commons once take it into examination? Nay, did not Sir S. F. by his memory (without the books, which for some reasons were refused to be brought in) name about thirty of them, and the respective sums yearly paid to each? And would not many more have been discovered, and the whole knot of them severely and exemplarily punished, if that Parliament had been a little longer continued? Now there is none more implacably your enemy, than that person whose interest it is to destroy you; that must neither eat nor drink, except you starve; that must go in rags, except you go naked; are taught to fleece you, that they



they may keep themselves warm. To prevent this, avoid not only all former pensioners, but such other as may be in danger to become so; therefore meddle not with men of necessitous fortunes, or much in debt. The representatives of a nation ought to consist of the most wise, wealthy, sober, and courageous of the people, not men of mean spirits, and little figure, and sordid passions, that would sell the interest of the people that chose them, to advance their own; or be at the beck of some great men, in hopes of a lift to a good employ. Those that have fair estates, have in a manner given hostages to their country, and must be errant fools before they can play the knave with you. But what cares the needy passenger if the ship perish, if he can but save himself in the long-boat, or get some booty by the wreck? What protection can you expect from them who cannot shew their faces with confidence without a protection, either in or out of Parliament? Who are no less apprehensive of a bailiff, than of the once growing greatness of the French; and dread not Popery half so much as an outlawry? Will you secure them within the walls of the House of Commons, who were secured within the walls of a common goal? Who can never pay their debts contracted by their prodigality but out of your purses; and must run you in, to get themselves out of their mortgages? These men's fear of being dissolved, makes them submit to any thing, rather than be left to the unmerciful rage of their hungry creditors, who have so long fasted for their money. For all such persons, though some of them may be looked upon as fair conditioned gentlemen, are in danger of being tempted to repair the decays of their own private fortunes, by the ruin of the public. Moreover, the choosing such broken fortunes, decays trade, and ruins whole families; insomuch that I have known it drive  
many



many men, contrary to their own inclinations, to wish never to see Parliaments more in England. In a word, if beggars ever come to be your representatives, how can they judge what is expedient for the nation to spare, whose only care is, to get a piece of money to spend?

4. As you are not unadvisedly to choose such as retain to the Court at home, so much less are you to elect any such as have their dependence on foreign Princes or States; these are under strong obligations to see you ruined, for your own reason will tell you, that no foreign power will prodigally throw away his pistoles, where he expects not an harvest answerable to his seed. It is possible this caution may not be unnecessary; for it is more than suspected, that there are some such degenerated Englishmen, who having forsaken the interest of their native country, have sold themselves to an outlandish interest, that they may the better gratify their own ambition, and those potent lusts which their own meaner fortunes could not otherwise feed or satiate.

5. Be not over-fond to receive bribes and gratifications from persons that would fain make a prey of you, and by their purses, lavish treats and entertainments, would allure you to prostitute your voices for their elections; you may be assured they would never bid so high for your suffrages, but that they know where to make their markets. Choose the worthy unwilling person, before the complimentary unworthy man, whose extraordinary forwardness prognosticates he seeks not your good, but his own, separate from the public. Let us not play the fools or knaves, to neglect or betray the common interest of our country by a base election; let neither fear, flattery, nor gain, bias us. Consider with yourselves, what losers you will be, if to laugh and be merry one day, the person you choose, should give you and your children occasion to mourn for ever after.—Say  
S  
not,



not, "he's but a single person, one man cannot do so much hurt." Silly men! What if all other places should be as bad as yourselves? Then all the House would be of a piece: And besides, do not you know that sometimes a single man hath carried a vote, which perhaps was no less mischievous than irretrievable? Think how justly the gallant ancient heathens may upbraid this baseness of us Christians, when they sacrificed many of their children, nay, and oftentimes their own lives, for the good of their country: So on the contrary, do we sacrifice, or at least haphazard, both our religion, lives, children and country, for the swinish pleasure of a day or two's debauchery.

6. Make not your public choice the recompence of private favours; it is not pleasing a neighbour because rich and powerful, but saving of England, that you are to regard. Neither pay nor return private obligations at the cost of the nation. Sir John is a pretty gentleman, and treats people civilly; and my landlord is a good man, and has been kind; and Esquire such a one is our next Justice of the Peace, but yet I will not give my voice contrary to my conscience, or have an hand in a choice that may ruin my country, to gratify any or all of them; let no such engagements put you upon dangerous elections, as you love the liberties and freedom of your posterity; but tell them in this affair they must hold you excused, for that the weight of the matter will well bear it: This is your inheritance, all may depend upon it; it is a more modest request if they would desire you to give them that freehold estate, that qualifies you for an elector, than to press you to be for a man, that in your conscience you think unfit, or not so fit as his competitor, for so weighty a trust. Men do not use to lend their wives, or give their children, to satisfy personal kindnesses; nor ought you to make a swop of your birthright,



birthright (and that of your posterity's too) for a mess of pottage, a feast, or a lusty drinking bout; there can be no proportion here, and therefore none must take it ill, that you use your freedom about that, which in its constitution is the great bulwark of all your ancient liberties.

7. Have a care of ambitious men, and non-residents, such as live most about the town, and not with their estates in the country. These seek honours and preferments above, and little or never imbetter the country with their expences or hospitality; for they are too much for themselves to act vigorously for the advantage of their country: Or if in the House they do for a while swagger a little, and speak it briskly, 'tis only that the Court may take notice of them, and take them off by some preferment; and then these false patriots shall be the only sticklers for unbounded prerogative.

8. Be resolved, against all temptations, to choose no minors: What, will you be content with sucking statesmen, and beardless politicians, and Rehoboam's counsellors? Then expect, for well you deserve, to be dashed with scorpions. Can you judge them fit to dispose of your liberties, lives, estates and religion, who cannot legally dispose of their own estates or themselves? What security can they give you, that they will not give away yours and you, whose bond in the eye of the law will not be taken for 40 s.? But sure, your own experience of what such green persons have been, and none, in former Parliaments, hath I hope learned you sufficient wisdom not to choose the like again.

9. Elect no prodigal or voluptuous person, for besides that such are not regular enough to be law-makers, they are commonly idle; and though possibly they may wish well to your interest, yet they will rather lose it than their pleasures; they will scarce leave one of their nightly revellings, to give you their attendance



and service the next day, and therefore they are not to be relied upon. And upon this occasion I shall borrow the words of an author, to whom I do not much desire to be beholden: "Some Senators are drawn from their duty by pleasure, perhaps a party at tennis, bowls, cards, a pack of dogs, a cock-fight, or a horse-match, a comedy, a good fellow, or a mistress: And while they are thus employed, the vigilant faction steals a vote that is worth a kingdom.—Some again are so transported with the vanity of dress and language, that rather than serve the public with one hair amiss, or in one broken period, they will let the public perish, *mallent republicam turbare, quam capillos*. These, while their country lies at stake, are ordering of their heads, and polishing the phrase, or shaping the parts of a set speech, till it is too late to use it. Nothing methinks does less become a grave assembly, than this *facultatula loquendi*; this same rhetorical twittle-twattle; it spins out so much time in tedious circumstance, that it makes a man even sick of a good cause, and for the very form prejudice the reason of it.—Sloth and neglect are yet more dangerous in a Senator, in regard of surprizes from the faction; these think a wet day, or a cold morning, a sufficient discharge of their attendance; and while they are taking the other nap, or the other bottle, the Monarch perhaps has lost his crown, or the subject his liberty."

10. Avoid all such as play the Protestants in design, and are indeed disguised Papists, ready to pull off their mask on the first opportunity, whenever time serves. You may know them by their swaggering for a Popish successor to maintain the Protestant religion; their laughing at the Popish plot, and disgracing the evidence of it; and at the same time affirming, without any grounds, the reality of a Presbyterian plot; their associating with  
known



known Papists, and winking at them ; but eager heats to put the laws in execution upon Protestant Dissenters : These are men, whose affection for the Protestant interest, notwithstanding all their fair speeches, may justly be questioned, since their practice gives their words the lie : Nor will their large pretensions, and seeming zeal for the church of England, at all prevail with wise men ; for we know, the Papists themselves, when it is for their interest, will pretend the same thing, and speak fair of our church, and rail only upon the Fanaticks, when yet in their hearts they hate our church, as much as they do any of the sects : Observe all their pamphlets, the noise is against the Presbyterians and Dissenters, but it is with a design to destroy them first, and the church of England afterwards ; for when so great a body of Protestants are represented as disloyal and dangerous, and crushed and undone, the church of England-men will be left alone, and then they hope to deal with them well enough : And that this is their aim, may be perceived, if you observe how zealous Papists are to stir up prosecution against Dissenters ; and none more joyful when it goes on, &c. Now what's all this for ? Are they, think you, indeed and in earnest, so very kind to the church of England ? For what acquaintance ? No, no, it is all dissimulation and roguery, a design which they drive on, first to divide, and then to ruin us. Therefore beware how you choose any such tool as they make use of therein. The contrary are men that bless God for the most happy discovery of the hellish Popish plot, and all their wicked shams ever since, and would have the bottom thereof fairly searched into, and the traitors, though never so great or potent, brought to condign punishment, and in their conversation zealously direct themselves in an opposition to the Papal interest, which indeed is a combination against good sense, reason, and conscience,



conscience, and to introduce a blind obedience, without (if not against) conviction? And that the principle, which introduces implicit faith and blind obedience in religion, will also introduce implicit faith and blind obedience in government: So that it shall be no more the law in the one than in the other, but the will and power of the superior, that shall be the rule and bond of subjection; this is that fatal mischief Popery brings with it to civil society, and for which all such societies ought to beware of it, and its friends and abettors; which sure none can be, but such who are designed for slaves by nature as well as fortune; debauched, lewd, unthinking animals, properly enough called Tories; silly, servile, yet conceited and cruel creatures, altogether of a weak understanding.

11. As for your citizens, burgessees, and freemen of cities and corporations in particular, I shall only say, *that whoever is not fit to be chosen Knight of the shire, is likewise unfit to be chosen a Burgess*: Neither let the more specious pretences of any man that shall promise to build you a town-hall, or relieve the poor with money, or out of his adjacent woods, or any such good-morrows, deceive you; for if so, wherein are you wiser than your horses, whom you catch every day, and clap a bridle into their mouths, only by shewing them a few oats, which they are never like to eat? Even the very mice are too wise to be taken by an old bait, but will first have the trap new baited before they'll meddle: And yet I have known a Corporation which has been taken twice by the same bait. But suppose these men should really perform what they promise, what compensation is that, if the same men should lay a good swinging tax upon your estates, without a real cause? Or should give up the very power you have of taxing yourselves, or sending your representatives in Parliament (for one bad  
Parliament



Parliament may ruin us) what good would the money for your poor do in such a case, more than, that when you are thereby reduced to beggary, you might perhaps yourselves (the gentry of the country having no reason to relieve you) be forced to come in for a small share of this their hypocritical charity? An excellent reward for a knavish folly. Neither say—*O! this is but one man, and can have but one vote; he will do our town a great deal of good, and can do us but little hurt if he would, &c.* For 1. (as I told you before) one or two voices have sometimes carried a vote of great importance. You know not what mischief your bad example may do in other Corporations; and if all should do so, what a miserable case would you be in, since the voices of the boroughs make two thirds of the House? Lastly, no man can tell the influence that one running talkative ill man may have over the rest of the House, especially over those that weigh words more than sense or reason, and the interest of their country.

Hitherto we talked of negatives, and described such as are not fit to be chosen; now we come positively to set before you who are fit for such a trust in such a dangerous juncture as I suppose we may fall into. In order to which, we must consider for what ends they serve; and they are principally two. The first is, the preservation of our religion from Popery; the other is, to preserve inviolable our liberty and property, according to the known laws of the land, without any giving way unto, or introduction of that absolute and arbitrary rule, practised in foreign countries, which we are neither to imitate or regard. Therefore,

1. Take care to choose such as are well known to be men of good consciences, fearing God, thoroughly principled in the Protestant religion, and of high resolution to maintain it with their lives and fortunes. Among these,



these, rather cast your favour upon men of large principles (I mean in matter of mere opinion) such as will not sacrifice their neighbours *property* and civil rights to the forwardness of their own party in religion. Narrow souls, that will own none but those that bear their own image and superscription, will sooner raise persecution at home, than secure us from Popery and invasion from abroad. The great interest of England, at this day, is to tolerate the tolerable, to bear with the weak, to encourage the conscientious, and to restrain none, but such as would restrain all besides themselves.

2. As we ought, as near as we can possibly judge, to elect good Protestants towards God, and just towards men, yet since in this age men are not so spiritual as they ought to be, it is not amiss to see for those, whose spiritual interest is seconded by a temporal one: For though men talk high, and keep a great noise with conscience and love of their country, yet when you understand mankind aright (not as it should be, but as it is, and I fear ever will be) then you will find, that private interest is the string in the bear's nose; it is that governs the beast. And therefore the sure champions for our religion, *ceteris paribus*, against the Papacy, are our Abby-landed men; for notwithstanding the registered dispensation to King Henry the eighth from the Pope, for the seizing those monasteries and lands, yet of late they pretend, that the Pope had not power to aliene them from the church; so that the present possessors can never trust or rely upon that, or any new promises or actual grants thereof, especially from him, whose everlasting and declared maxim it is,—*never to keep faith with Hereticks*. Undoubtedly, to make easy his ascent unto the saddle, he will proffer many assurances and grants; but if these Abby-landed men be not the most silly of all others, they will never believe him. For when he is once firmly settled,



settled, then will he, with his canon-law distinctions, like fire under quicksilver, evaporate away all his promises, and violently resume the lands, glorying of his own bounty, if he require not the mean profits, ever since they have sacrilegiously withheld them from holy church.

3. Endeavour to choose men of wisdom and courage, who will not be hector'd out of their duties by the frowns and scowls of men. Never had you more need to pitch upon the old English spirit, that durst be faithful and just against all temptations. What a degenerate race have we known, that could never yet resist smile or frown, but tamely sunk below their own convictions, and knew the evil they did, but yet durst not but commit it!

4. Make it your business to choose such as are resolv'd to stand by and maintain the power and privileges of Parliaments (for they are the heart-strings of the commonwealth) together with the power and just rights of the King, according to the laws of the kingdom, so as the one may not intrench upon the other: And such as, with a becoming true English courage, will prosecute all traitors, whether already impeach'd, or to be impeach'd; and to secure us from Popery hereafter, and to remove all corrupt and arbitrary Ministers of State, and wicked Judges, and officers of the discovery of the Popish plot, and suborners, and vile pamphleteers, that endeavour so industriously to clear the Papists, and expose the Protestant religion, and poison the people.

Lastly, take particular notice of those who are men of industry and improvement; for such as are ingenious and laborious to propagate the growth and advantage of their country, will be very tender of yielding to any thing that may weaken or impoverish it.



If you conduct yourselves thus prudently, honestly, and gallantly, in your choice, without putting the gentlemen whom you choose to serve you to charges, the consequence will be, that as you will be sure to have a good Parliament, whenever his Majesty shall please to call one, and such as will be zealous for the safety of the Protestant religion, and prosperity of the nation, if they shall continue to sit and act; so on the other hand, if they should be dissolved, and never so many new Parliaments be called, yet you run no hazard, for the same candidates will still be ready to serve you. And so we shall conclude our discourse of Parliaments, when I shall first have observed, that anciently all freemen of England, though not freeholders, had a right to choose their representatives, till the same was altered and limited by the following statute, for the reasons therein mentioned.

*The Statute Anno. 8 Henry 6, Cap. 7.*

What Sort of Men shall be Choosers, and who shall be chosen Knights of the Parliament.

**I**TEM, *Whereas the elections of Knights of shires, to come to the Parliaments of our Lord the King, in many counties of the realm of England, have now of late been made, by very great, outrageous and excessive numbers of people, dwelling within the same counties of the realm of England, of the which most part was of people of small substance, and of no value, whereof every one of them pretended a voice equivalent, as to such elections to be made, with the most worthy Knights and Esquires, dwelling within the same counties, whereby manslaughter, riots, batteries, and divisions among the gentlemen, and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided in this behalf. 2. Our Lord the King considering the premises, hath provided, ordained,*



ordained, and established, by authority of this present Parliament, that the Knights of the shires, to be chosen within the said realm of England, to come to the Parliament of our Lord the King hereafter to be holden, shall be chosen in every county of the realm of England, by people dwelling and resident in the same counties, whereof every one of them shall have land or tenement to the value of forty shillings by the year, at the least, above all charges. 3. And that they which shall be so chosen, shall be dwelling and resident within the same counties. 4. And such as have the greatest number of them, that may expend forty shillings by the year and above, as afore is said, shall be returned by the Sheriffs of every county Knights for Parliament, by indentures sealed betwixt the said Sheriffs, and the said choosers, so to be made. 5. And every Sheriff of the realm of England shall have power, by the said authority, to examine, upon the Evangelists, every such chooser, how much he may expend by the year. 6. And if any Sheriff return Knights to come to the Parliament, contrary to the said ordinance, the Justices of assizes, in their sessions assizes, shall have power by the authority aforesaid therefore to enquire. 7. And if by the inquest the same be found before the Justices, and the Sheriff thereof be duly attainted, that then the said Sheriff shall incur the penalty of an hundred pounds, to be paid to our Lord the King; and also that he have imprisonment for a year, without being let to mainprize or bail. 8. And that the Knights for the Parliament returned contrary to the said ordinance, shall lose their wages.

Now though this statute inflicts the pecuniary penalty of one hundred pounds, and no more, on the Sheriff for a false return, yet the House may further punish him by imprisonment for a year, without bail, and this at their pleasure by the law and custom of Parliaments.



But since the making this statute, and since frequent Parliaments are now called, there have been many statutes made concerning,

1. The qualifications of a member to serve in Parliament.
2. The method of issuing out writs and precepts.
3. The manner of choosing a *Knight of the shire*, and the qualifications of the voters, and of taking the poll of the freeholders.
4. Of officers of the excise, who concern themselves in elections, and of treating-voters by any person.
5. Of false and double returns of members to serve in Parliament.
6. Of elections of members for the cinque-ports.
7. Of the continuance of Parliaments.

And first of the qualifications of members : By the statute 9 Anna, cap. 5, it is enacted, that no person shall be a member who hath not an estate of freehold or copyhold for life, or for some greater estate, to and for his own use, either in law or equity, viz. for every *Knight of a shire*, six hundred pounds per annum, over and above what will satisfy all incumbrances. And for every Citizen and Burgeſs, and Baron of cinque-port, three hundred pounds per annum ; and if any person returned to serve in Parliament, shall not *at that time* be seised of such an estate, &c. the return shall be void.

*Proviso*, that the *eldest son of a Peer*, or of any person qualified by the act to serve as Knight of the shire, shall not be incapable of being elected and returned, &c.

*Proviso*, that the universities may return members as formerly.

There is another *proviso*, that no person shall be qualified by virtue of any mortgage, whereof the equity of redemption is in another, unless the mortgagee shall have been in possession seven years before the election.

Every



Every candidate shall, at the request of another candidate at the time of election, or by the request of two or more persons who have a right to vote, take this oath.

*The OATH.*

**I** L. E. do swear, that I truly and bona fide have such an estate in law or equity, and to and for my own use and benefit, of or in lands, tenements or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, of the annual value of six hundred pounds, above reprises, as doth qualify me to be elected and returned to serve as a member for the county of Wilts, according to the known and true meaning of the act of Parliament in that behalf: And that my said lands and tenements, or hereditaments, are lying or being within the parish, township or precinct of Ogburne, in the said county, or in the several parishes of Welford, Boxford and Shefford, in the county of Berks. Or as the case is.

But if the candidate is for a city, borough or cinqueport, then the oath shall relate only to three hundred pounds per annum, *mutatis mutandis*.

It must be administered by the Sheriff or Under-Sheriff, or by the Mayor or other officer who takes the poll, or by any two Justices of the Peace in England or Wales; and they must within three months after certify the same into the Chancery or King's Bench, upon the forfeiture of one hundred pounds between the King and the informer, with full costs.

The candidate refusing to take the oath, either at the time of election, or before the day on which the Parliament meets, his election and return shall be void.

And there shall be taken but one shilling for administering the oath, and two shillings for making the certificate, and two shillings for filing it, and no more, under  
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the penalty of twenty pounds, to be recovered and divided as aforesaid.

2. As to the method of issuing out writs and precepts, it was enacted by the statute 7 and 8 W. cap. 25. that there shall be forty days between the test and return of the writ of summons, and that the Lord Chancellor, &c. upon every new Parliament, shall issue out writs with all convenient speed, which shall be delivered to the proper officer, and to no other; and he must endorse the writ the day when he received it, and forthwith make out his precept, and within three days deliver it to the proper officer, who hath the execution thereof, and to no other person; and he shall endorse the day when he receives it, and give public notice of the day of election, and proceed to the choice within the space of eight days after the receipt of the precept, and give at least four days notice of the day appointed for the election.

And that no officer or Mayor, &c. shall take any fee or gratuity for making out the precept, or for the delivery, return or execution of any such writ or precept.

3. As to the manner of choosing a Knight of the shire, and the qualifications of a voter, it is enacted by the last mentioned statute, that the Sheriff shall hold his next county Court for the election, &c. at the usual places where it had been held for forty years last past, and there proceed to the choice, unless it fall out to be within six days after he receives the writ, and then he shall adjourn the Court to some convenient place, giving ten days notice of the time and place.

And if the election be not determined on the view, but a poll is required, the Sheriff shall proceed to take it, and for that purpose he may depute as many clerks as he thinks fit, who shall be sworn by the Sheriff or Under-Sheriff, truly and indifferently to take the poll, and shall



shall set down the names of every freeholder, the place of his freehold, and for whom he polls, and shall poll no freeholder who is not sworn. And the Sheriff, &c. shall appoint such persons as shall be nominated by each candidate to be inspectors of every clerk.

The Sheriff, &c. must proceed to poll the freeholders then present, and shall not adjourn the county Court to any other place, without the consent of the candidates, nor by any unnecessary adjournment delay the election, but shall proceed from day to day, till the freeholders shall all be polled.

And every officer and Mayor shall forthwith deliver a copy of the poll to such person who shall desire it, paying reasonably for writing the same; and for every wilful offence shall forfeit to the party grieved 500 l. to be received by him, or by his executors or administrators, with full costs.

The county Courts for Yorkshire shall be held on Wednesdays, and the Sheriff of Hampshire, at the request of the candidates, shall adjourn the poll from Winchester, after every freeholder there is polled, to Newport, in the Isle of Wight.

As to the qualification of a voter, he must not only have 40s. per annum freehold, as aforesaid, but by the same statute it is enacted, that no man shall vote for or by reason of any trust or mortgage, unless he be in actual possession, or receive the profits; but the mortgagor or the *cestui que trust* in possession, may vote; and all conveyances to multiply votes, or to split or divide the interest in lands amongst several persons, to enable them to vote, shall be void, and no more than one vote shall be admitted.

No person under twenty-one shall vote at any election for any member, and no person shall be capable of being chosen, who is not twenty-one years old, and every



every election and return of a minor is void; and if such minor presume to sit and vote, he shall incur such penalties as if he had never been chosen.

But notwithstanding this statute for electing Knights of the shires, there were several scandalous practices invented to multiply votes, therefore anno. 10 Anna, cap. 22, it was enacted, that all estates and conveyances made fraudulently, and on purpose to qualify the person to vote, though subject to an equity of redemption, yet shall be taken to be absolute against the person who executed the same; and all bonds, and all other securities for the redeeming such estate, shall be void, and the person making or procuring the making, or preparing or advising the same, shall forfeit 40 l. to any person who will sue for it.

No man shall vote for a *Knight of the shire* in right of any lands, which have not been charged to the *public taxes, church rates, and parish duties*, in such proportion as other lands of 4 s. per annum, within the same parish, are usually charged, and for which such person shall not have received, or be entitled to receive the profits to the full value of 40 s. to his own use, for one year before the election, unless such lands came to him by descent, marriage, devise, or presentation to some benefice, or by promotion to some office, to which such freehold is annexed; the person voting contrary, shall for every offence forfeit 40 l. to be divided between the poor of the parish where the lands are, &c. for which he voted, and him who will sue for the same.

The Oath of the Freeholder; that by the Stat. 7 W. being repealed.

**Y**OU shall swear, that you are a freeholder in the county of Wilts, and have freehold lands or hereditaments, lying in Ogburne, in the county of Wilts, of the yearly value



value of 40 s. above all charges, payable out of the same, and that such freehold estate hath not been made or granted to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at Ogburne, in the said county; and that you have not been polled before at this election.

This oath is to be administred by the Sheriff or Under-Sheriff, or sworn clerk, by him appointed to take the poll; and a freeholder convicted of perjury, or of suborning another freeholder to commit wilful perjury, shall incur the penalties of the statute 5 Elizabeth, cap. 9.

In taking the poll the Sheriff, &c. must enter the place of the voter's freehold, and of his abode, and shall mark *jurat* against his name; and the returning officer shall, within twenty days after the election, deliver over to the Clerk of the Peace all the poll-books, on oath made before the two next Justices of the Peace, *quorum unus*, &c. without imbezzlement or alteration; and in such counties where there are more than one Clerk of the Peace, he shall deliver the original poll-books to one, and the attested copies to the other, to be preserved amongst the records of the sessions of the peace.

The Sheriff of Yorkshire shall appoint seven convenient places for taking the poll, at the cost of the candidates, there to continue till the poll is ended.

And the Sheriff of Chester shall appoint five places, and no more, in the Shire-Hall, for taking the poll, at the cost of the candidates, viz. two at the upper end, two on each side, and one at the lower end.

In this act there is a *proviso*, that a Quaker declaring the effect of the oath upon his solemn affirmation, &c. as directed by the act 7 William, shall be admitted to vote, and the word *affirmat* shall be writ against his name, and if he is convicted of wilfully affirming a  
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thing which is false, he shall incur the penalties of perjury.

And by another statute 12 Anna, cap. 5, it is enacted, that the statute 10 Anna, cap. 22, shall not extend to restrain any person from voting for a *Knight of a shire*, in respect to, or in right to any tithes, or other incorporeal inheritances, or in any messuages or lands in extraparochial places, or in any chambers in the *Inns of Court or Chancery*, or in any messuages or seats belonging to any office, in regard or by reason the same have not been taxed to any *public taxes, church rates, or parish duties*, or in respect or right of any other messuages or lands, in regard the same have not been usually taxed as aforesaid, provided they have been usually assessed to some one or more of the said public taxes, rates or duties, in such proportion as other lands of 40 s. per annum, within the same parish.

4. And because officers to collect the duties of excise, may have an influence upon ale-house-keepers and others, to vote or not to vote, therefore by this statute 5 and 6 William and Mary, it is enacted, that no collector, supervisor, gauger, or other officer concerned in the excise, shall in any manner persuade or dissuade a voter, either to give or not to give his vote, upon the penalty of one hundred pounds, one moiety to the informer, the other to the poor of the parish where the offence shall be committed, to be recovered by any person who will sue; and if the defendant shall be convicted, he shall lose his office, and be incapable of executing any place under the government.

And because all elections should be free from bribery, it is further enacted by the statute 7 William, cap. 4, that after the test of the writ of summons, or issuing out any writ for electing a member, if any person by himself, or by any other in his behalf, or at his charge,



charge, shall before his election give, or promise to give the voter any meat, drink or gift, &c. for his vote, such person shall be disabled to serve in Parliament, and shall be deemed no member.

5. And to prevent all *false and double returns*, 'tis declared by the statute 7 and 8 William, cap. 7, that all *false returns* wilfully made are against law; and that if any person shall return a member contrary to the last determination of the House, of the right of electing in such a place, it shall be adjudged a *false return*, and that the party duly elected may sue the returning officer, and shall recover double costs and damages.

And if any officer shall wilfully, maliciously and falsely return more persons than are required by writ to be chosen, the like remedy shall be had against him by the party grieved, or against any one who procured such return. And that all contracts, promises, bonds and securities, to procure any returns of a member, shall be void, and he who made such contracts, &c. to procure either a false or double return, shall forfeit three hundred pounds, one third part to the crown, another to the poor, &c. and the other to the informer, with costs.

The Clerk of the Crown shall enter every single and double return in a book, and every alteration and amendment that shall be made to such return, to which book all persons shall have free access, and take copies, paying reasonable fees; and if any suit be brought, the prosecutor may give that book in evidence, or a true copy thereof; and the Clerk of the Crown wilfully omitting to perform his duty, forfeits five hundred pounds, to the party grieved, and shall lose his office.

All actions on this statute must be brought within two years after the cause of action, and not afterwards.



This was only a temporary law at first, but by the statute 12 Anna, cap. 15, it is made perpetual.

Then by the statute 10 and 11 William, cap. 7, it is enacted, that the Sheriff, or any other officer, who hath the execution or return of the writ, shall return the same to the Clerk of the Crown in Chancery, but not exceeding fourteen days after the election, and shall pay him four shillings for the return of every Knight of the shire, and two shillings for every member, the same to be allowed in his accounts to the King in the exchequer.

And every officer not making such return forfeits five hundred pounds, to be divided between the King and the prosecutor.

6. As to elections for members to serve for the cinque-ports, the Lord Warden for the time being did formerly claim a power to nominate one member for each of the said cinque-ports, and for the two ancient towns and their members; but now by the statute 2 William, cap. 7, such nominations are declared to be contrary to law, and void for the future.

And by the statute 10 and 11 William, cap. 7, the proper officer of the cinque-ports shall have six days after the receipt of the writ of summons, to deliver the precept to the returning officer there.

7. As to the privilege of the members, it is enacted by the statute 12 William, cap. 3, that actions may be prosecuted against any member who is entitled to privilege immediately after the dissolution or prorogation, until a new Parliament shall be re-assembled; and likewise immediately after any adjournment of both Houses for above fourteen days, and until they are re-assembled.

The process against a Peer is the same as it is out of privilege-time; and the process against a Commoner must be by summons, attachment and distress, till he appear and file common bail; and if a bill be exhibited, then



then a copy left with the defendant, or at his house, lodging, or place of abode, shall be good, and the plaintiff may proceed: And if the defendant doth not appear, and put in his answer, or doth not perform any order of the Court, his estate may be sequestered; but no person entitled to privilege shall be arrested during the continuance of privilege.

Where any suit is staid by privilege, the plaintiff shall not be barred by the statute of limitations, be nonsuited, or be dismissed for want of prosecution; but shall proceed to execution at the rising of the Parliament.

But by the statute 2 Anna, cap. 18, a debtor to the crown shall have no manner of privilege, only his person shall not be arrested.

And an officer of the revenue, or any other officer of public trust, may be sued for any forfeiture, misdemeanour or breach of trust, relating to his office or trust; and such suit, either against Peer or Commoner, shall not be staid by privilege.

But the process must be by summons as aforesaid, and not by arrest.

8. As to the sitting and continuance of Parliaments, it is enacted by the statute 6 William and Mary, cap. 2, that from henceforth a Parliament shall be holden once in three years at the least, and that no Parliament shall continue any longer, to be accounted from the day on which by the writs they are appointed to meet.

But this is now enlarged to seven years.

And for the better preservation of the peace, and securing of the rights and liberties of the people, it is enacted by another statute, made 7 and 8 William, cap. 15, that the Parliament shall not determine, or be dissolved, upon the demise of the King, but shall continue and meet, and act for six months afterwards, unless



less it be sooner prorogued or dissolved by the next in succession; and in case there shall be no Parliament at that time, then the last preceding Parliament shall meet and act.

We shall now proceed to certain other excellent laws made before this time, for the preservation of our liberties, and in the first place mention that admirable *Petition of Right*, granted by King Charles the first, in the third year of his reign.

### The PETITION.

*The Petition exhibited to his Majesty, by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning the Rights and Liberties of the Subjects.*

*To the King's most Excellent Majesty,*

**H**UMBLY shew unto our sovereign Lord the King, the Lords Spiritual and Temporal, and Commons, in Parliament assembled, that whereas it is declared and enacted, by a statute made in the time of the reign of King Edward the first, commonly called *Statutum de Tallagio non concedendo*, that no tallage or aid shall be laid or levied by the King, or his heirs, in this realm, without the good will and assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgessees, and other the freemen of the commonalty of this realm. 2. And by the authority of Parliament, holden in the five-and-twentieth year of the reign of King Edward the third, it is declared and enacted, that from henceforth, no person shall be compelled to make any loans to the King, against his will, because such loans were against reason, and the franchise of the land. 3. And by other laws of the realm it is provided, that none should be charged by any charges or imposition called a *benevolence*, nor by such like charge. 4. By which the statute before mentioned,



mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charges, not set by common consent in Parliament.

2. Yet nevertheless, of late, divers commissions, directed to sundry Commissioners in several counties, with instructions, have issued, by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty; and many of them, upon their refusal so to do, have had an oath administered unto them, not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and attendance before your Privy Council, and in other places; and others of them have been therefore *imprisoned, confined*, and sundry other ways molested and disquieted. 2. And divers other charges have been laid and levied upon your people in several counties, by Lord Lieutenants and Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by command or direction from your Majesty to your Privy Council, against the laws and free customs of this realm.

3. And whereas also by the statute, called the *Great Charter of the Liberties of England*, it is declared and enacted, that no freeman may be taken or imprisoned, or disseized of his freehold or liberties, or of his free customs, or be outlawed or exiled, nor in any manner destroyed, but by the lawful judgment of his Peers, or by the law of the land.

4. And in the eight-and-twentieth year of the reign of King Edward the third, it was declared and enacted by authority of Parliament, that no man, of what estate or condition that he be, should be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited,



ed, nor put to death, without being brought to answer by due process of law.

5. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm, to that end provided, divers of your subjects of late have been imprisoned, without any cause shewed. 2. And when for deliverance they were brought before Justices by your Majesty's writs of Habeas Corpus, there to undergo and receive as the Court should order, and their keepers commanded to certify the causes of their detainour, no cause was certified, but that they were detained by your Majesty's *special command*, signified by the Lords of your Privy Council, and yet were returned back to several prisons, without being charged with any thing, to which they might make answer according to law.

6. Whereas of late great *companies of soldiers* and marines have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them in their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people.

7. And whereas also by authority of Parliament, and in the five-and-twentieth year of the reign of King Edward the third, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and law of the land. 2. And by the said Great Charter, and other the laws and statutes of this your realm, no man ought to be judged to death, but by the laws established in this your realm, either by the customs of the realm, or by acts of Parliament. 3. And whereas no offender, of what kind soever, is exempted from the proceedings to be used, and punishments to be inflicted, by the *laws and statutes* of this your realm; nevertheless, of late, divers commissions under  
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your Majesty's great seal, have issued forth, by which certain persons have been assigned and appointed Commissioners, with power and authority to proceed within the land, according to the justice of *martial law*, against such soldiers and mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them cause to be executed and put to death, according to the law martial.

8. By pretext whereof some of your Majesty's subjects have been by some of the said Commissioners *put to death*, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

9. And also sundry grievous offenders, by colour thereof, claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborn to proceed against such offenders, according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commission as aforesaid. 2. Which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

10. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament. 2. And that none be called to make answer, or  
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take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof. 3. And that no freeman, in any such manner as is before mentioned, be imprisoned or detained. 4. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come. 3. And that the aforesaid commissions for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them, any of your Majesty's subjects be destroyed or put to death, contrary to the *laws and franchise of the land*.

11. All which they most humbly pray of your most excellent Majesty, as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example. 2. And that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the prosperity of this kingdom.

Which petition being read the 2d of June, 1632, the King's answer was thus delivered unto it:

**T**HE King willeth, that right be done, according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong, or oppressions, contrary to their



*their just rights and liberties; to the preservation whereof; he holds himself in conscience as well obliged as of his prerogative.*

But this answer not giving satisfaction, the King was again petitioned unto, that he would give a full and satisfactory answer to their petition in full Parliament;—whereupon the King in person, upon the 7th of June, made this second answer:

My Lords and Gentlemen;

**T**HE answer I have already given you, was made with so good deliberation, and approved by the judgment of so many wise men, that I could not have imagined but that it should have given full satisfaction; but to avoid all ambiguous words, and to shew you that there is no doubleness in my meaning, I am willing to please you in words, as well as in substance; read your petition, and you shall have an answer that I am sure will please you.

And then causing the petition to be distinctly read by the Clerk of the Crown, the Clerk of the Parliament read the King's answer thereto, in these words;

*Soit Droit fait, come est desire.*

Which is, *let right be done, as is desired.* This answer, and the manner of confirming this law, I have the rather recited, because the King's answer, and circumstances relating thereunto, were wholly left out in the printed book of statutes.

The petition itself is so plain, that there needs no comment thereon, only the reader may observe, that the things therein mentioned were the *ancient rights of the people*, and therefore they expressly demand them of the King as their rights and liberties.

And here it may not be improper to relate the original of those differences which happened between the King and his Parliament, who in all their remon-  
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frances and declarations insisted so much on the liberties of the people ; and this I shall do in a very short and impartial manner, giving only an account of matters of fact, collected out of many volumes written on that subject, and leave it to the judgment of the reader, to make what observations he shall think proper.

King Charles the first was involved in a war with Spain, by his father, and this was to restore his brother-in-law, who had married his sister, to the Palatinate.

He was soon afterwards engaged in another war with France, and he had no assistance from three successive Parliaments, which he called and dissolved in the beginning of his reign, and that put him upon unusual courses to raise money without them.

And therefore, in the year 1626, he sent Commissioners throughout England, &c. to levy money by way of loan, not at any certain rate, but according to the abilities of men, with respect to their estates and charge of their family ; and he turned out the Lord Chief Justice Crew, because he declared himself against such loans, and would have done the same by the Lord Chief Baron Walter, if his patent had been *durante placito* ; however, he was forbid to sit any more in Court.

He raised money by tonnage and poundage, and ship-money, &c. and they who refused to lend were committed : He raised soldiers, and required the counties to furnish the charges of coat and conduct money, and he appointed Commissioners to try, condemn and execute the soldiers by martial laws in time of peace, and many of them were quartered in private houses, against the consent of the owners.

He caused several persons of quality and others to be imprisoned, without shewing any cause, and for no certain time, and would not suffer them to be delivered by

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Habeas Corpus; all which grievances were redressed by him in the aforesaid petition of right, and in his third Parliament.

But yet the people were discontented, complaining that dispensations were made of several statutes against Papists, Priests and Jesuits, and that many of them had been released and pardoned, who had been actually condemned, and that he made Magistrates of those who were popishly inclined.

But this Parliament being dissolved, that which was afterwards called the long Parliament were assembled in the year 1640; but before they sat, he released all those who were committed for not paying ship-money, and tonnage and poundage, and some time afterwards the Earl of Strafford and Archbishop Laud were impeached of high treason, and sent to the Tower; and on the 16th day of December a committee was appointed to draw up a charge against the Archbishop, and on the same day he was named an incendiary, by the Scotch Commissioners, who promised to bring in their complaint the next day; and on Friday, December the 18th, Mr. Hollis was sent up to the Lords with the impeachment, and presently came in the charge of the Scotch Commissioners.

The Lord Keeper Finch, who was very zealous for the ship-money, withdrew into France, and so did Sir Francis Windebank, who was Secretary of State, and reputed a Papist, though in truth he was not.

Afterwards the King condescended to pass what laws the Parliament thought fit, for the security of the nation against Popery and arbitrary government.

As to the bill of attainder against the Lord Strafford, the House of Commons appointed Mr. St. John, the King's Solicitor General, to open it in the House of Peers, which he did on the 29th day of April; and the  
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next day some of the Lords began to incline to the bill, which moved the King (who was present at all the debates) to declare before both the Houses, on the first day of May, *that he could not with a good conscience condemn the Earl of high treason.*

Thereupon the Commons intending to send four Bishops to him, to satisfy and inform his conscience, and the day being appointed, the King being informed of their intention, sent for Dr. Juxon, then Bishop of London, to come to him very early in the morning of the same day, which he did accordingly, and upon a conference between him and the King about passing the bill, he advised the King “not to consent to it against the vote of his own conscience.”

The Archbishop Usher, and the Bishops of Durham, Lincoln, and Carlisle, came to the King in the afternoon; these being the four Bishops sent by the Commons, and the question then propounded was, “whether the King might in justice pass the bill of the attainder?” To which they gave this answer, “that if upon the allegations on either side, he did not conceive him guilty of the crime with which he was charged, he could not in justice condemn him:” Though Dr. Heylin tells us, that the Archbishop did advise the King to pass the bill, and make a distinction between his *personal and political conscience*; which Dr. Bernard, who preached that Archbishop’s funeral sermon, utterly denies, affirming that he heard the Archbishop deny it in his life.

But be that as it will, the clamours of the people were so great against him, that the Earl sent a letter to the King, wherein he set his conscience at liberty, “most humbly beseeching him, for the prevention of such mischiefs which might happen by his refusal, that he



he would pass the bill, and thereupon the King signed it, and the Earl was beheaded.

He likewise signed a bill to take away tonnage and poundage, and another to take away the Court of Star-Chamber, and the High Commission Court.

He also passed a bill to exclude the Bishops from sitting in the House of Peers, and afterwards declared, that he gave way to that bill, in hopes by that means to preserve their station in the House of God.

But a little before this, the bill for triennial Parliaments having passed both Houses, was also confirmed by his royal assent, and at the same time he passed the bill of subsidies, which were intended for the relief of the inhabitants of the northern counties, who were oppressed with two great armies, living upon free quarter, and raising money for their necessities: One of those armies were Englishmen, who were to repel the Scotch army which had invaded those parts; and though the King himself was to have none of the money to be raised by these subsidies, but it was to be applied for the relief of those who had suffered by those armies, yet the Commons would not pass it, till the King had passed the triennial bill, by which the Sheriffs were impowered to issue out precepts, to choose members of Parliament, in case the King should fail to issue out his writs in due time.

Afterwards he passed that act, which tied up his own hands, and that was, "that he should not prorogue, adjourn, or dissolve the Parliament, without their consent;" and having adjourned them for a time, went into Scotland, to quiet the commotions there.

During his absence, the fears and jealousies of a Popish party still continuing, the Commons drew up a remonstrance of the state of the nation, which was brought into the House upon their first meeting after the said adjournment, and was passed by a small majority of votes,



votes, the debate lasting from three in the afternoon till ten the next morning.

This remonstrance contained a repetition of all the past grievances, though some of them had been already redressed by the petition of right, and other acts of Parliament; it was afterwards delivered to the King, and it was certainly believed by the people, because it came from their representatives.

Soon afterwards, several informations were presented to the House, of plots and conspiracies against the state; as for instance, that the Papists and Malignants were about to rise in arms, and that forces from France and Denmark were coming to assist them to enslave the nation.

Thereupon great numbers of apprentices, and loose people of the city, came in a tumultuous manner towards Westminster: As they passed by Whitehall they cried out, that the King was not fit to live; that they would have no porter's lodge between him and them, but would come to him when they pleased, using some other threatening words, as if they intended to break open the gates.

But some officers of the King's army being then at the Court, and observing the insolence of the mob, run upon them with drawn swords, in which encounter some of the rabble were hurt, and others dangerously wounded.

These officers being soldiers by profession, were then called Cavaliers, that name being first given to them at that time, and upon this occasion, which afterwards was a common appellation to all those who were of the King's side, though they never were in arms.

However the mob proceeded to Westminster, and petitioned the House, that all Papists should be disarmed, and that the Bishops and popish Peers should be excluded



excluded the House of Lords, and that the kingdom should be put in a posture of defence, and the militia in such hands as the nation might confide in.

The King issued out a proclamation against these tumults, and sent an order to the Sheriffs of Middlesex, and to the Justices of Peace of Westminster, to set a guard upon the hall and the Parliament house.

The Commons voted this to be a breach of their privilege, and immediately after sent their Serjeant to discharge those guards, and one Mr. Long, a Justice of the Peace for Westminster, who had signed an order or warrant for those guards, was sent to the Tower.

The Commons not trusting to the aforesaid guards, but thinking themselves to be in danger of a malignant party, addressed the King to have a guard out of the city, to be commanded by the Earl of Essex, which the King civilly denied, and thereupon they ordered Halberds to be brought into the House.

The King being informed that the most turbulent men in these matters were, the Lord Kimbolton, Mr. Hamden, Mr. Stroud, Mr. Pym, Mr. Hollis, Sir Anthony Maitland, &c. he by his Attorney-General impeached them at the bar of the House for high treason, who exhibited seven articles against them, and he commanded that their chambers should be searched, and their trunks and papers sealed up.

This was voted a breach of the privilege of the Commons, and when the King demanded that those members might be committed, the Speaker, by order of the House, commanded them to attend every day.

Thereupon the King went with his guards, and attended by two hundred gentlemen, or thereabouts, to the House, and there in person intended to seize them; but they having notice of his coming, withdrew before he came.



The House voted this to be a very high breach of their privileges, and the people being very much exasperated at these proceedings, were ready to rise in arms; but to prevent the consequences of a general insurrection, this impeachment was dropped, and the King offered to grant a pardon to all such as should be thought convenient by both Houses.

This the Commons refused, and to provide for their own security, they ordered a guard of the city trained bands, to be commanded by Col. Skippen, and another guard upon the Tower, and sent Sir John Hotham to Hull, to command that town, and secure the magazine of arms there.

But still to quiet the minds of the people, the King sent a message to both Houses in writing, desiring them seriously to consider what should be necessary to support his royal authority, and to establish the religion, privileges and liberties of the people, and that when they had entered into such considerations, they should see how ready he would be to regard the examples of the most indulgent Princes; and concludes, that if the present distractions do not end in an accommodation, that he hath not failed on his part.

To this message, the Commons alone returned an answer, by way of petition, viz. that to give them a sure confidence in what he intended, he would be pleased forthwith to put the Tower of London, and also the militia, into the hands of such persons who should be recommended to him by that House.

The King replied, that he hoped his message which he had sent to them, would have produced some better effect; that as for the Tower, he had already committed it to the government of Sir John Byron, a person of fortune and integrity, but that he would remove him, if they had any thing material to object against him; as for the  
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the forts, they should be always in the hands of such persons as the Parliament might confide in, but that it was his prerogative to name those persons; and as for the militia, when they should propose any course for settling it, which he should think was for the security of the kingdom, he would then return an answer agreeable to his honour and the safety of the people, and would not deny them any thing, but such which would alter the fundamental laws; and that having already granted more than any King before him, that encouraged them to ask more than any subjects had ever done.

However, if they would let him know the grounds of their jealousies and fears, he would apply proportionable remedies, protesting, that the preservation of the peace, and the laws and liberties of his subjects, should be always his greatest care, exhorting them, that they would not be transported with fears of impossible dangers, but that they would pursue his proposals in his written message to them; which by the blessing of God might compose these distractions.

It was some time before the Commons made any reply; for as yet the Lords did not join with them in petitioning for the militia; but the Bishops having been insulted by the mob in coming to the House, the Archbishop of York presented a petition to the King, and to the Peers, signed by himself and eleven other Bishops, setting forth their right to sit in Parliament, and demanding the King's protection; but so long as they were threatned and insulted, they would not attend the service of the House, and therefore they protested against all proceedings there in their absence.

Soon afterwards, at a conference desired by the Lords with the House of Commons, the Lord Keeper told them, that this petition and protestation of the twelve Bishops was against the fundamental privileges and be-



ings of Parliaments; and thereupon the Bishops were voted guilty of high treason, and committed to the Black Rod, and afterwards to the Tower, and there they remained till the King passed the bill for disabling the whole order to sit and vote in Parliament.

The Bishops being thus excluded, and several popish and other Lords frightened from their attendance, and many petitions coming from counties and cities, and particularly from Oxford, some desiring that the popish Lords might be put out of the House, others that the kingdom might be put in a posture of defence; the majority of the Lords remaining in the House, who upon the 16th of January refused to join with the Commons, did on the 2d of February following, upon a motion of Mr. Hollis, at a conference, join with them in a petition to the King, that the nation might be put in a posture of defence, setting forth the calamities in which the kingdom was involved, and the danger which threatened the King; and though they received his written message with thankfulness, and would have earnestly pursued his proposals therein, yet for the safety of his person, and for removing all jealousies between him and his people, and for suppressing the rebellion in Ireland, they humbly insisted that he would put the Tower of London, the forts and militia, in such persons hands whom they should recommend to him, and concluded, that they expected his immediate answer, because the distractions of the kingdom would admit of no delay.

The King replied, that he had considered their petition, and when he should know the extent of the power which was intended to be established in those persons whom they desired to be officers of the militia, and to what time it should be limited, then he would declare himself contented to put in all places, both of his forts and of the militia, such persons as both Houses should approve



approve or recommend to him, so that they would declare their names before-hand to him.

Now before the two Houses named persons to be Lord Lieutenants of the county militia, they first made an ordinance to regulate the militia in London, and then they petitioned the King to settle the militia in the several counties, giving him a list of the names of the persons who they desired might be Lord Lieutenants, and at the same time presented to him a form of their ordinance for regulating the militia of London, by which they desired him to settle the militia of the kingdom.

But the King refusing what they desired, there were fresh reports of dangerous plots, designed by the Papists, to set several cities and towns on fire; and thereupon another petition was sent from the Parliament to the King, who was then at Dover (to accompany the Queen and his daughter, who were going to Holland) to which petition they desired such a speedy answer, which might raise a confidence in them, that they should not be exposed to those who endeavoured to kindle a combustion here, as they had already done in Ireland, and which nothing could hinder but his granting their petition.

The King replied, that as for the city of London, and such other corporations, who had power by charters to order the militia, he would not alter it, and that he would not consent to any indefinite time proposed by them, to put the kingdom in a posture of defence.

The two Houses voted this answer to be a denial of their petition, which would hazard the peace of the whole kingdom, unless some speedy remedy were applied by the Parliament; and that those persons who advised the King to make this answer, were enemies to the state: And immediately after this vote, they sent another



ther petition to the King (then at Newmarket) protesting, that if he did not speedily assent to what they had desired, they should be under a necessity to dispose the militia by the authority of both Houses, and that they had resolved to do so.

This petition was brought to him by the Earls of Warwick and Holland, both sworn servants to him, and both of his Privy Council; and at the same time they brought a declaration of both Houses, setting forth his misgovernment, by attempting to incense the northern army against the Parliament, by his proceedings against the Lord Kimbolton, and the five members, by the suspicious desire of a guard about his person, by his underhand promoting the Irish rebellion, by ordering his Admiral, Sir John Pennington, to land the Lord Digby, to procure foreign forces to assist him against his Parliament; and that this is the more credible, because he removed from London, with the Prince, and because many advertisements came from Rome, and other foreign parts, of great aids intended for him, in order to some design then in hand against the Protestant religion and Parliament, concluding with their humble desires, that he would put away his evil counsellors, and trust to his Parliament; which if he would do, they would sacrifice their lives and fortunes in his service.

Then the aforesaid two Lords desired him to come nearer to his Parliament, but he refused; and when they moved him that the militia might be settled for a time as the Parliament had desired, he swore, "no not for an hour, nor for a minute, though his wife or children had desired it."

Thereupon the Parliament voted that the kingdom should be put into a posture of defence, and that the navy should be commanded by an Admiral of their own naming,



naming, and that a declaration should be drawn up and published of the reasons and grounds of their fears.

And now more petitions were brought from all parts of the kingdom, purporting such fears from Papists, that the people stood on their guard every where, not daring to go to church unarmed, earnestly desiring assistance from the Parliament; and thereupon the ordinance for ordering the militia by the authority of both Houses was passed, and a new Lieutenancy was appointed throughout England and Wales, without his consent.

Afterwards in a grand Committee, sitting at Merchant-Taylors Hall, a declaration was drawn up of a design to alter religion, and that the wars both in Scotland and Ireland were raised for that purpose.

This declaration was also presented to the King; but he not approving of it, the Parliament voted his commissions for the Lieutenancy illegal, and that there was a necessity for them to put the kingdom in a posture of defence, and that their ordinance for the militia ought to be obeyed by the fundamental laws of the kingdom, and that the Earl of Warwick should be Vice-Admiral; and thereupon Sir John Pennington was turned out, and the Earl soon afterwards sailing with a strong squadron of men of war, reduced all such ships whose officers refused to obey his orders, and seized on a man of war in the Downs, bound for Newcastle for the King's service, and also another vessel loaded with gunpowder.

The King, as hath been already mentioned, thinking his person in danger by the London tumults, never returned thither after he went to Dover with the Queen; and another reason was, because the militia of London was commanded by its own officers, and regulated by the Parliament; but he went from Dover to Greenwich, and from thence to Hampton-Court, whither he sent for the



the Prince and Duke of York, and soon afterwards he went to Huntingdon, from whence he published a declaration in answer to that which was brought to him at Newmarket, by the Earls of Holland and Warwick, in which he set forth, that he had no evil counsellors, but if the Parliament could find any such, he left them to their censure; that he had no design against the Protestant religion; that it was a causeless injury to charge him with any inclinations to the Irish rebellion; that he never intended to exasperate the late northern army, or to use them against the Parliament; that he had already given a sufficient answer about the Lord Kimbolton and the five members; that the care of his own person made him remove from Whitehall, having first caused him to have a guard there, and to accept the service of the gentlemen of the Inns of Court; and that he looked on the foreign advertisements to the Parliament to be idle and false.

Whilst he was at Huntingdon, he sent a message to the two Houses, that he intended to reside at York for some time; and afterwards coming thither, he took a guard for the security of his person, and marched in a little time to Hull, where he had a magazine of arms, which were brought thither for the war against the Scots.

But Sir John Hotham, who had been sent thither by the Parliament with some forces, having summoned the militia of the neighbouring counties to assist him, refused him entrance into the town, though he desired it with no more than twenty horsemen; upon which he caused him to be proclaimed a traitor, and so returned to York, from whence he sent to the Parliament, to demand exemplary justice to be done on him, and that the town might be forthwith delivered to him, together with the magazine of arms.

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But the Parliament justified this action of Sir John Hotham, and declared the King's design against Hull an infringement of the liberties of the people; and immediately sent some of their own members thither, the better to secure the town and magazine.

The King being now at York, issued out his letters of Summons to the gentry of Yorkshire to attend him there, who coming accordingly, he told them of the proceedings of the Parliament, and of the business at Hull, and desired their assistance to guard his person, to which they agreed, and returned to their respective habitations to raise forces, which the King told them were necessary for his present service.

Not long after his coming to York, several of the nobility and gentry, and some of the House of Commons, came thither to him; particularly the Lord Keeper Littleton, who had already delivered the seal to one who was sent for it by the King; but now it was recommitted to him again, and he, together with the Duke of Richmond and the Marquis of Hertford, and about forty more Earls and Lords, subscribed a writing, dated the 3th of June, 1642, wherein they engaged not to obey any thing which was not warrantable by law, and that they would defend the King's person, crown and dignity, against all powers whatsoever, and also the Protestant Religion, and the lawful liberties of the people, and both Houses of Parliament, and that they would not obey any order concerning the militia, which had not the royal assent.

And now the King having raised an army of about 2000 foot and 1000 horse, out of the militia of Yorkshire, he once more marched to Hull; but Sir John Hotham had furnished the garrison with men and ammunition, and he caused all the sluices to be pulled up, by which he laid all the low grounds under water, so that

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the King could not besiege the town in form, but blocked it up.

And now the garrison sallied out with about 500 men, commanded by Sir John Meldrum, and beat the King's forces, who run away to Beverly; and afterwards upon a second sally, commanded by the same officer, they killed about twenty, and took as many prisoners on the King's side, and set fire to his magazine of gunpowder, which ill success made him raise the blockade, and return to York.

All this while the Parliament were not idle; for they insisted that what they had done at Hull was to prevent a war upon them, which they knew the King designed when he went into the north; for otherwise why did the Queen go into Holland, with the ancient jewels of the crown, and with pictures of great value, but with an intent to raise money and buy arms, which she afterwards brought into England, when she landed at Burlington-Bay, in Yorkshire? Or else why did the King leave his Parliament and go to York, and there raise forces, upon a pretence of a guard for securing his person, which soon encreased to an army?

They then published a declaration, forbidding all men to attend the King at his pleasure, except such who were bound to it by special service; and that all others should be esteemed disturbers of the public peace; and that the Sheriffs through England should raise the power of each county, to suppress them.

They also set forth another declaration, charging the King with the breach of his word and promises, and with many oppressions of his subjects, and violations of the laws: And they voted, that he being seduced by wicked counsel, intended to make war against the Parliament, who proposed no other end in all their consultations and actions, but the care of the kingdom, and duty to his person.



person. Then they made a large remonstrance, in justification of their own proceedings, in which they declared, that they had brought their work to such a success, that nothing could hinder the accomplishment of it but the curse of God. Within three days after this remonstrance, they sent a petition to the King at York, blaming him for a breach of his promise, and desiring him to disband his forces, otherwise they must take care to secure themselves and future Parliaments.

Shortly afterwards they set forth a third remonstrance, still justifying their own actions, and blaming the King, insisting upon the obligation of his oath to pass all bills which the Parliament should tender to him; and about this time the magazine was removed from Hull to the tower; and they voted, that whosoever should lend the King money upon his jewels, should be adjudged an enemy to the state.

Within four days after this remonstrance, they published a declaration, in which they declared, that his proclamation on the 27th of May, 1642, forbidding obedience to the Parliament's ordinances for the militia, was void in law, requiring all officers to muster, and to march according to their ordinance.

And on the 12th of July, after a long debate, they voted an army should be raised for the safety of the King and of both Houses, and of all those who had obeyed their orders, and for preserving the religion, laws and liberties of the people, and that the Earl of Essex should be General.

And accordingly they issued out commissions for raising of men, and for mustering the militia, which they insisted was done by them in their own defence, otherwise the King might have marched to London, and have surprised them.



They voted also, that what the King had done at York, was preparative to a war against them, and a breach of the trust reposed in him by the people, and contrary to his oath, and tending to the dissolution of the government; and that all those who served him therein, were traitors to the laws of this kingdom.

They voted also, that a petition should be sent to him at York, to move him to agree with his Parliament, and to prevent a civil war; and that he would dismiss his forces, and return to his Parliament, and hearken to their advice; and that he would agree to settle the militia by bill, in such way as should be safe to him, agreeable to the Parliament, and for the good of the kingdom and them; and that he would leave delinquents to their justice, and then they would cease the preparations they had made for their defence, and put Hull in the same condition as it was before Sir John Hotham had the command of it. This petition was delivered by the Earl of Holland, Sir John Holland, and Sir Philip Stapleton. The King told them, that he was driven from Whitehall for the safety of his person, and not until the Parliament had raised guards to secure themselves, without the least colour of danger; that they had usurped a power over the militia, against law and his consent; that they had taken possession of his magazine at Hull, and committed it to Sir John Hotham, who shut the gates against him, which they justified; that he would not dismiss his forces till Hull was reduced; that as for coming nearer to his Parliament, he thought his person not safe, and that he should be glad to hear of some examples made on the ringleaders of the tumults; but that the Commons had declared they knew no such persons, though the Peers had desired them to join in a declaration  
against



against them, and that they had neglected to enquire out the authors of seditious speeches and writings.

That as for leaving delinquents to their justice, he protected none; but if by delinquents, they meant such who refused to submit to their orders about the militia and navy, or such who had published his declarations or proclamations, he would protect them to his utmost power; but was contented that all delinquents should be prosecuted according to the known laws of the land; that since they had sent this petition, they had beaten drums for soldiers, and chose a General of horse; that Sir John Hotham had seized his wine and provisions for his household: And desired, that Hull, his magazines and navy, be forthwith delivered to him, it being high treason in those who commanded them; and demanded, that all arms and provisions for war, made by both Houses, might be laid down immediately, and that then he would instantly lay down all his forces, and come to the Parliament; and that all differences might be debated in a parliamentary way, and that he expected a full answer by the 27th day of July, and that till then he would make no attempt upon Hull.

The Parliament replied, by the Earl of Holland, that they could not deliver Hull, nor the navy, nor recall their ordinance for the militia, nor lay down their arms, because what they had done was for securing their religion, and the laws and liberties of the people; all which they saw were in imminent danger, from which danger when they should be secured, and that the forces raised by the King should not be used to their destruction, then they would comply with the King's demands; but they excused their laying down arms, till the causes which moved them to take them up were removed, and then they would make no farther preparations.

But



But previous to all this matter, and a little before the Lord Keeper Littleton, and other Lords, had signed the aforesaid writing at York, the two Houses sent nineteen propositions to the King, containing proposals for a peace, in which they demanded the militia; which the King answered by the Marquis of Hertford and the Earl of Southampton, but would by no means part with the militia, till at last, rather than things should run to extremities, he offered to sign a bill for the settlement of the militia for a certain time, and was contented to leave the nomination of half the Lieutenancy to the Parliament, reserving the appointing the other half to himself.

But the Parliament not agreeing to it, there was nothing but preparations for war on both sides; for the two Houses sent out an order with proposals to bring in money and plate, and to provide horses and arms to suppress the traitorous attempts of evil counsellors, who sought to engage the King in a war against his Parliament; and they sent out several of their most active members to execute their ordinance about the militia in several counties; and afterwards they borrowed money and plate *on the public faith*; and this was to buy arms, and raise men, to guard both Houses.

The citizens of London readily complied to lend their money, and to bring in their plate, and their wives and daughters brought in their bodkins, thimbles and caudle cups, though the King had sent a letter to the Lord-Mayor, Aldermen, and Sheriffs, forbidding them to lend any money to the Parliament.

But that letter had very little effect; for immediately on news thereof, the Parliament made an order that the Deputy Lieutenants should forthwith raise horse for the service of the King and Parliament, which they justified in a declaration, affirming it to be for the maintenance  
of



of the Protestant religion, the person of the King, the laws of the land, and the privileges of Parliament, and liberties of the people ; by which declaration, they forbid the spreading the King's letter, intimating that neither his commands or threats could deter those who were well affected, from contributing money, horses, or plate ; and that the county of Essex, in particular, had contributed 207,000 l. and upwards, and 800 horse ; and the county of Hertford 8000 l. and 300 horse ; and many other counties in proportion.

The King had also issued out his commission of array into all parts of the kingdom, which course had been formerly used for suppressing any insurrection or invasion ; and he not only insisted on the lawfulness of such commissions, in some of his declarations, but he set forth a proclamation to inform the people that they were lawful ; and the Lord Strange, son of the Earl of Darby, put these commissions in execution in Lancashire and Cheshire, and the Earl of Huntingdon, and Mr. Hastings, his son, did the like in Leicestershire, but not without opposition from the Lieutenancy appointed by the Parliament.

And now the two Houses published a long declaration against those commissions of array, representing the unlawfulness of them, by which the nation would be enslaved ; and thereupon they sent out orders to forbid the publication of these commissions, and they sent Sir Richard Gurney, Lord-Mayor of London, to the Tower for publishing them.

Afterwards they caused two other declarations to be drawn up, setting forth, that their endeavours were for the service of the King, and for his honour and safety, and for regaining the ancient laws of the land, and the liberties of the people, and for settling the Protestant religion in peace ; charging the King with endeavours to alter



alter both, and with a breach of his protestations; and that being seduced by popish councils, he had begun a war upon his Parliament, which gave them just occasion to raise forces for the defence of their laws and liberties.

And now some skirmishes began between those Commissioners of array, and the Commissioners of the militia appointed by the Parliament; and particularly by the Lord Strange, in Lancashire, as aforesaid; who, with the militia he had raised for the King, intended to have seized Manchester; but being opposed by Sir Thomas Stanley and others, there was one man killed on the King's side, which was the first blood drawn in this quarrel, after the forces on each side were raised.

The army being now commanded on the Parliament's side by the Earl of Essex, the King issued out a Proclamation, dated on the 9th of August, declaring that Earl and all his adherents traitors; but with a promise of a pardon to all those who should within six days return to their obedience.

This caused the Parliament to publish another declaration, full of invectives against the King; declaring also those to be traitors who contrived that proclamation; and that if he would leave his evil counsellors, and be advised by his Parliament, they would still make him and his posterity great Princes.

Whilst these declarations were making on both sides, the Parliament's forces did not sit still, for they took Portsmouth by siege, and they surprized Dover Castle; and having borrowed 100,000 l. of the money which had been raised for the service of Ireland, they levied fresh forces, and made up an army of above 30,000 horse and foot, whilst the King's forces were not so formidable till he went to Shrewsbury, and so to the borders of Wales, where he was recruited with money and plate, by which he raised such a considerable number  
of



of men, that he was able to give battle to the Earl of Essex.

On the 25th of August, the King set up his standard at Nottingham; but as soon as he came thither, he sent a message to the two Houses, intimating that some mistakes had arisen by several messages, petitions, answers and replications, which had passed between them, and which might have been prevented by a nearer treaty; he therefore proposed that either side should give power to fit persons, to treat and conclude all differences between them, promising not only safety, but encouragement to those who should be enabled by the Parliament to treat; and concludes, that if this proposal be rejected, God would absolve him from the guilt of the blood which must be shed.

The Parliament returned an answer, refusing to enter into any treaty, till the King had recalled his declaration, by which he declared the Earl of Essex, and both Houses of Parliament, with all their adherents, to be traitors, intimating that while they remained traitors they could not, by the fundamental privileges of Parliament, make any other answer, but desired him to take down his standard.

The King protested, that he never intended to declare both Houses traitors, or set up his standard against them; and to remove all scruples, he promised, if they would revoke their declarations against all persons who assisted him to be traitors, he would on the same day recall his proclamations and declarations, and would also take down his standard.

The two Houses answered, that they could not recede from their former answer, and positively insisted that the King would recall his declarations first, and take down his standard, and leave his forces, and return to his Parliament; intimating, that they would



not be set in equal balance with those, whose counsels had prevailed to hinder the relief of Ireland: And at the same time they set forth a declaration, that the forces which they had raised, were for the laws and liberties of the kingdom; and that they could not with any manner of safety be disbanded, till the King should leave those who had been voted delinquents, to the justice of the Parliament. The King replied, he could neither do or offer more, and that he should think himself clear of the blood which might be shed in this quarrel, *praying God so to deal with him and his posterity as he desired to preserve religion, the laws and liberties of his subjects, and the privileges of Parliaments.*

The two Houses repeated their former answer, and withal, that whilst the King protected delinquents, the nation could not be safe, nor the rights of Parliaments maintained; and therefore they could not enter into any farther treaty with him: So to battle they went, of which I shall only mention those three of Edg-Hill, Marston-Moor, and Naseby; for it would be too long to give any historical account of the rest. And first as to the battle at Edg-Hill, which was fought on the 23d day of October, it was a question at that time who had the better of it; it is true, the Parliament sent the Earls of Pembroke and Holland, the Lords Say and Wharton, and Mr. Strode, on the 27th of October, to acquaint the Lord-Mayor, Aldermen and citizens, with the greatness and certainty of their victory, and that God had owned his own work; and that as the cause had been undertaken with their purses and persons, so they would crown their work by following it with zeal. And the Commons voted a present of 5000 l. to be given to the Earl of Essex, their General, which was accordingly paid to him; and on the 11th of November, both Houses set forth a declaration of the valour and services



Services of that General, which was to remain on record in those Houses, for a mark to his person, name and family, to posterity. But it is as true that the King took five hundred prisoners in this battle, who being moved to enter into his service, most of them refused, and yet they were discharged with life and liberty, having first taken an oath never to serve against him; from which, we are told, they were afterwards absolved by Mr. Stephen Marshal, a famous preacher in those days. It is likewise true, that on the day after the battle the Earl of Essex marched by speedy journeys towards London; and that on the same day there was an order from both Houses, by which all the citizens, both of London and Westminster, were commanded to shut up their shops, and put themselves in readiness to defend the city and Parliament. Now there could be no occasion for such an order, if the Earl of Essex had been victorious; however, the King marched after him, and this made the Parliament fear that he would come upon them before their forces came to London; and 'tis certain that the King might have come much sooner than he did, but he staid by the way to take Banbury, Oxford and Reading, and then he marched towards London. The Earl of Essex had lodged two of his best regiments at Brentford, and some more of his forces at Uxington, Acton, and other villages, to stop the King in his march, yet on the 12th of November he beat up their quarters at Brentford; but being told that the Earl of Essex had rallied his forces, and that he, together with the auxiliaries of London, commanded by the Earl of Warwick, were in readiness upon Turnham-green to stop his march, he was advised not to hazard battle, having no other army, if this should be beaten; and that made him retire to Oatlands, and from thence



to Reading, and so to Oxford, that being thought the fittest place for his Court and Council to reside in.

The battle of Marston-Moor, near York, was fought on July the 2d: Prince Rupert commanded the King's army, and the Earls of Manchester and Leven (better known by the name of Colonel Lesly) and the Lord Ferdinando Fairfax, commanded the forces of the Parliament. At first Prince Rupert got ground, and those in the main battle were so hard put to it, that they fell on the reserve of the Scots behind, and the right wing of the Parliament-horse being as hard put to it by the left wing of the Prince, they committed the like disorder, by falling on the Lord Fairfax's foot, and the Scots reserve, and by this means the Prince possessed himself of their cannon, and those three generals of the Parliament retired. This news came flying to Oxford, being reported by some of the Parliament soldiers who had fled out of the field, and it was so welcome there, that it was entertained with bells and bonfires, and discharging all the cannon about the town. But there being no horse sent to make good the ground which was left by the Parliament forces in their retreat, and the Prince's soldiers being very earnest upon pillage, Colonel Cromwell, who commanded the Earl of Manchester's horse, and who made a fair retreat in the heat of the battle, on purpose to put new life into his men, and having rallied the broken foot into some order, he then pressed hard upon the Prince, and turned the fortune of the day, for which service he was cried up to be the *saviour of three kingdoms*. There were more killed in this battle than in any during the whole course of the war, for those who buried the dead found the bodies of 8000 men slain.

And now we are come to the battle which is the last of the three I proposed to mention; this battle was fatal



tal to the King, and all his party. It seemed very unaccountable, that after he had taken Leicester, and thereby put his affairs in a more hopeful way than they had been at any time during the war (as he told the Queen, in a letter to her) that he should come back to Daventry, and there spend almost a fortnight, without doing any thing. The noise of the siege of Oxford, by the Lord Fairfax, was a poor excuse for his returning; for certainly his staying so long at Daventry could not be the way to raise that siege. Neither was Oxford then in any great danger, so as to make him return from the pursuit of his success; for it was made a jest, that there was no other inconvenience by that siege, but that the ladies could not be supplied with fresh butter for their pease. But by his return to Daventry, he gave time to Cromwell (without whom the Lord Fairfax could do but little) to come up to the army with 600 horse; and even then they could not have made so much haste to fight the King at Naseby as they did, if they had not intercepted a letter, the very night before the battle, from Colonel Goring to the King, in which he wrote that he was marching towards him, desiring the King to keep at a distance, and not to engage till he came. Cromwell, upon reading this letter, resolved to fall on the next day, which was done, and the King's army routed, his cabinet of letters and papers taken, being most of them written to the Queen, in some of which he gave her leave to promise some favours to the Roman Catholics in England, if she could obtain any succours for him from the Catholics abroad.

These letters were printed and published by order of the Parliament; but it being contrary to the rules of humanity to publish those things which pass between husband and wife, it was generally disliked; and therefore the Parliament gave order, that these intercepted letters



letters should be left out of that volume of ordinances published by Edward Husbands. After this battle the King or his party were never able to make any considerable opposition to the forces of the Parliament, but lost battle after battle, and place after place, under the conduct of their two Generals, the Lord Fairfax, and Oliver Cromwell; till at last being reduced to a very low ebb of fortune, he was forced to quit Oxford, and fly to the Scottish army for protection, by which he was some time afterwards delivered up to the Parliament, upon such terms as had been agreed upon between them. Then he was confined to some of his own houses, and having refused to pass such bills as were offered to him, they voted, that no more addresses should be made to him. It is true, Cromwell and the officers of the army treated him very honourably, and with respect and freedom, at Hampton Court; but he fled from thence to the Isle of Wight in a disguise, and there he was kept close prisoner for several months.

In Scotland, Duke Hamilton had raised an army for the King, to set him at liberty, and thither Cromwell went to oppose him. During his absence, those who were called *Puritans* in both Houses (for the name of *Presbyterian* was not then in fashion) resolved to take this opportunity to treat, and make a final agreement with the King, then at the Isle of Wight, upon certain conditions, to which at last he agreed; and had he done so when the treaty first began, and come immediately to London, and joined his interest with that of the Parliament and the city, he might have raised an army able to give battle to those forces which Cromwell was bringing from Scotland, after he had reduced it.

But the time being delayed by several unnecessary punctilios in the treaty, that General with his independent army marched up to London, and put an end to it,



it, by excluding all those of the House of Commons who had voted the King's concessions satisfactory; and then the remaining part (which were called the *rump*, not being above sixty in all) first voted the House of Lords useless and dangerous, they having refused to join with them, and so ordered the matter that they met no more. Afterwards they passed an ordinance for the trial of the King, by certain Judges appointed by them for that purpose; and though he denied their power, yet they condemned him, and he was beheaded at the gates of his own palace.

In the next place I shall mention that excellent statute commonly called the *Habeas Corpus* act, by which the subjects are freed from all causeless, tedious and arbitrary imprisonments.

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Anno tricesimo primo *Caroli Secundi* Regis, Cap. 2.  
*An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas, commonly called the Habeas Corpus Act* \*.

**W**HEREAS great delays have been used by Sheriffs, Goalers, and other officers, to whose custody any of the King's subjects have been committed, for criminal or supposed criminal matters, in making returns of *Habeas Corpus* to them directed, by standing out an *Alias* and *Pluries Habeas Corpus*, and sometimes more, and by other shifts, to avoid their yielding obedience to such writs, contrary to their duty, and the

\* The writ of *Habeas Corpus* is a remedy given by law, for such as are unjustly detained in custody, to procure their liberty.

"The *Habeas Corpus* act is a second *Magna Charta*, and stable bulwark of our liberties. *Magna Charta* only, in general terms, declared that no man shall be imprisoned contrary to law; but the *Habeas Corpus* act points him out the effectual means, as well to release himself, though committed even by the King in Council, as to punish those who shall thus unconstitutionally misuse him." *Blackst. Com.*

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known laws of the land, whereby many of the King's subjects have been, and hereafter may be, long detained in prison, in such cases where by law they are bailable, to their great charges and vexation.

2. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority thereof, that whensoever any person or persons shall bring any *Habeas Corpus* directly to any Sheriff or Sheriffs, Goaler, Minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the goal or prison, with any of the under officers, under keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under officers, or keepers, or deputies, shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judges or Court, that awarded the same, and endorsed upon the said writ, not exceeding twelvepence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the Court or Judge to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; and bring, or cause to be brought, the body of the party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the Great Seal of England, for the time being, or the Judges or Barons of the



the said Court from whence the said writ shall issue, or unto and before such other person or persons, before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such Court or person is, or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of twenty days after such the delivery aforesaid, and not longer.

3. And to the intent that no Sheriff, Goaler or other officer, may pretend ignorance of the import of any such writ, be it enacted by the authority aforesaid, that all such writs shall be marked in this manner, *per statutum tricesimo primo Caroli secundi regis* \*, and shall be signed by the person that awards the same. And if any person or persons shall be or stand committed or detained, as aforesaid, for any crime, unless for felony or treason, plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict, or in execution by legal process) or any one on his or their behalf, to appeal, or complain to the Lord Chancellor, or Lord Keeper, or any one of his Majesty's Justices, either of the one bench, or of the other, or the Barons of the Exchequer, of the degree of the Coif. And the said Lord Chancellor, Lord Keeper, Justices or Barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons, or by on his, her, or their behalf, attested and subscribed by two witnesses, who were present at the delivery of

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\* By statute of the 31st of King Charles the Second.

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the same, to award and grant an *Habeas Corpus* under the seal of such Court, whereof he shall then be one of the Judges, to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron, of the degree of the Coif, of any of the said Courts. And upon service thereof as aforesaid, the officer or officers, his or their under officer or under officers, under keeper or under keepers, or deputy, to whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said writ is made returnable; and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer. And thereupon within two days after the party shall be brought before them, the said Lord Chancellor, or Lord Keeper, or such Justice or Baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum, according to their discretion, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the Court of King's Bench, the term following, or at the next assizes, sessions, or general goal delivery, of and for such county, city or place, where the commitment was, or where the offence was committed, or in such other Court where the said offence is properly recognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizance or recognizances, into the said Court, where such appearance is to be made, unless it shall appear unto  
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the said Lord Chancellor, or Lord Keeper, or Justice, or Justices, Baron, or Barons, that the party so committed is detained upon a legal process, order, or warrant, out of some Court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences, for the which by the law the prisoner is notailable.

4. Provided always, and be it enacted, that if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a *Habeas Corpus* for his enlargement, such person so wilfully neglecting shall not have any *Habeas Corpus* to be granted in vacation-time, in pursuance of this act.

5. Be it further enacted by the authority aforesaid, that if any officer or officers, his or their under officer, or under officers, under keeper or under keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoners, according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner, or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he or they are hereby required to deliver accordingly, all and every the head goalers and keepers of such prisons, and such other person, in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner, or party grieved, the sum of 100 l. and for the second offence, the sum of 200 l. and shall, and is hereby made incapable to hold and execute his said office. The said penalties to be recovered by the prisoner or party grieved,



his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the King's Courts at Westminster, wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution, by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance. And any recovery or judgment, at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved, for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

6. And for the prevention of unjust vexation, by reiterated commitments for the same, be it enacted by the authority aforesaid, that no person or persons, which shall be delivered or set at large upon any *Habeas Corpus*, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such Court wherein he or they shall be bound by recognizance to appear, or other Court having jurisdiction of the cause. And if any other person or persons shall knowingly, contrary to this act, recommit or imprison, or knowingly procure or cause to be committed or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner, or party grieved, the sum of 500 l. any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

7. Provided always, and be it further enacted, that if any person or persons shall be committed for high treason or felony, plainly and specially expressed  
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in the warrant of commitment, upon his prayer or petition in open Court the first week of the term, or first day of the sessions of *Oyer and Terminer*, or general goal delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of *Oyer and Terminer*, or general goal delivery, after such commitment, it shall and may be lawful to and for the Judges of the Court of King's Bench, and Justices of *Oyer and Terminer*, or general goal delivery, and they are hereby required, upon motion to them made in open Court, the last day of the term, sessions or general goal delivery, either by the prisoner, or any one in his behalf, to set him at liberty upon bail, unless it appear to the Judges and Justices, upon oath made, that the witnesses for the King could not be produced the same term, sessions, or general goal delivery. And if any person or persons committed as aforesaid, upon his prayer or petition in open Court, the first week of the term, or first day of the sessions of *Oyer and Terminer*, and general goal delivery, to be brought to his trial, shall be indicted and tried the second term, sessions of *Oyer and Terminer*, or general goal delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

8. Provided always, that nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause; but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to law for such other suit.

9. Provided always, and be it enacted by the authority aforesaid, that if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person



son shall not be removed from the said prison and custody, into the custody of any other officer or officers, unless it be by *Habeas Corpus*, or some other legal writ; or where the prisoner is delivered to the Constable or other inferior officer, to carry such prisoner to some common goal; or where any person is sent by order of any Judge of Assize, or Justice of the Peace, to any common work-house, or house of correction; or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; or in case of sudden fire, or infection, or other necessity. And if any person or persons shall, after such commitment as aforesaid, make out and sign, or countersign, any warrant or warrants for such removal aforesaid, contrary to this act, as well he that makes, or signs or countersigns, such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid, by the party grieved.

10. Provided also, and be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any prisoner and prisoners as aforesaid to move and obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of King's Bench, or Common Pleas, or either of them. And if the said Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons, for the time being, of the degree of the Coif, of any of the Courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of *Habeas Corpus* by this act required to be granted, being



ing moved for as aforesaid, they shall severally forfeit to the prisoner, or the party grieved, the sum of 500l. to be recovered in manner aforesaid.

11. And be it enacted and declared by the authority aforesaid, that an *Habeas Corpus*, according to the true intent and meaning of this act, may be directed, and run into any county palatine, the cinque-ports, or other privileged places, within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the Isles of Jersey or Guernsey, any law or usage to the contrary notwithstanding.

12. And for preventing illegal imprisonments in prisons beyond the seas, be it further enacted by the authority aforesaid, that no subject of this realm that now is, or hereafter shall be an inhabitant or resident of this kingdom of England, dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into any parts, garrisons, islands or places beyond the seas, which are, or at any time hereafter shall be within or without the dominions of his Majesty, his heirs and successors. And that every such imprisonment is hereby enacted and adjudged to be illegal. And that if any of the said subjects now are, or hereafter shall be so imprisoned, every such person and persons so imprisoned shall and may, for every such imprisonment, maintain by virtue of this act an action or actions of false imprisonment, in any of his Majesty's Courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons, that shall frame, contrive, write, seal or countersign, any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same, or any of them. And the plaintiff in every such



such action shall have judgment to recover his treble costs, besides damages; which damages so to be given, shall not be less than 500 l. in which action no delay, stay, or stop of proceeding, by rule, order or command, nor no injunction, protection, or privilege whatsoever, nor any more than one imparlance, shall be allowed, excepting such rule of the Court where the action shall depend, made in open Court, as shall be thought in justice necessary, for special cause, to be expressed in the said rule. And the person or persons who shall knowingly frame, contrive, write, seal or countersign, any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from henceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or town of Berwick upon Tweed, or any of the islands, territories or dominions thereunto belonging, and shall incur and sustain the pains, penalties and forfeitures, limited, ordained and provided, in and by the statute of provision and premunire, made in the sixteenth year of King Richard the second, and be incapable of any pardon from the King, his heirs or successors, of the said forfeitures, losses or disabilities, or any of them.

13. Provided always, that nothing in this act shall extend to give benefit to any person who shall, by contract in writing, agree with any merchant or owner of any plantation, or other person whatsoever, to be transported beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

14. Provided always, and be it enacted, that if any person or persons, lawfully convicted of any felony, shall



shall in open Court pray to be transported beyond the seas, and the Court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or any thing therein contained to the contrary notwithstanding.

15. Provided also, and be it enacted, that nothing herein contained shall be deemed, construed, or taken to extend to the imprisonment of any person before the first day of June, 1679, or to any thing advised, procured, or otherwise done, relating to such imprisonment; any thing herein contained to the contrary notwithstanding.

16. Provided also, that if any person or persons, at any time resident in this realm, shall have committed any capital offence in Scotland or Ireland, or any of the shires, or foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making this act; any thing herein contained to the contrary notwithstanding.

17. Provided always, and be it enacted, that no person or persons shall be sued, impleaded or molested for the same, within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

18. And to the intent no person may avoid his trial at the assizes, or general goal delivery, by procuring his removal before the assizes at such time as he cannot be brought back to receive his trial there, be it  
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enacted,



enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common goal, upon any *Habeas Corpus* granted in pursuance of this act; but upon any such *Habeas Corpus* shall be brought before the Judge of Assize in open Court, who is thereupon to do what to justice shall appertain.

19. Provided nevertheless, that after the assizes are ended, any person or persons detained may have his or her *Habeas Corpus*, according to the direction and intention of this act.

20. And be it also enacted by the authority aforesaid, that if any information, suit or action, shall be brought or exhibited against any person or persons, for any offence committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded, had been good and sufficient in law to have discharged the said defendant or defendants against the said information, suit or action; and the said matter shall then be as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same matter in bar or discharge of such information, suit or action.

21. And because many times persons charged with petty treason or felony, or as accessories thereunto, are committed upon suspicion only, whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the Justices of Peace that committed the persons, and have the examination before them, or to other Justices of Peace in the county: Be it therefore enacted;



enacted, that where any person shall appear to be committed by any Judge, or Justice of the Peace, and charged as accessory, before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

*The Comment.*

**T**HERE are three things that the law of England, which is a law of mercy, principally regards and taketh care of, viz. *life, liberty, and estate*. Next to a man's life, the nearest thing that concerns him is freedom of his person; for indeed what is imprisonment, but a kind of civil death? Therefore saith Forrescue, cap. 42, the laws of England do in *all cases* favour liberty.

The writ of *Habeas Corpus* is a remedy, given by the common law, for such as were unjustly detained in custody, to procure their liberty: But before this statute was rendered far less useful than it ought to be, partly by the Judges pretending a power to grant or deny the said writ at their pleasure, in many cases; and especially by the ill practices of Sheriffs and Goalers, by putting the prisoner to the charge and trouble of an *alias* and *pluries*, that is, a second and third writ, before they would obey the first; for there was no penalty till the third, and then at last the Judges would oft-times alledge, that they could not take bail, because the party was a prisoner of state, &c. Therefore to remedy all those mischiefs, this most wholesome law was provided, which we shall briefly endeavour to divide in-



to its several branches, and explain it to the meanest capacities, since no man is sure but one time or other he may have occasion to make use of it.

The act concerneth either, first, persons committed for some other criminal, or supposed criminal matter, besides treason or felony, and these are to have an *Habeas Corpus* immediately. 2. Such who in their mittimus are charged with treason and felony; and these shall have the benefit of the said writ after the time herein limited. If any Goaler, or under Keeper, shall not deliver a true copy of the mittimus within six hours after the prisoner demands it, the head Goaler or Keeper forfeits to the prisoner for the first offence 100 l. for the second offence 200 l. and loses his place. Nor is there any fee to be paid for the same, the Turnkey must deliver it at his peril. And note, if the prisoner should be lock'd up, or none suffered to come at him, any friend of his may demand the same on his behalf.

2. Whatever the criminal matter be, if treason or felony be not expressly charged, any person, on the prisoner's behalf, carrying such true copy of the commitment to the Lord Chancellor, or any one of the Judges, or Barons of the Exchequer, or upon oath made that a copy was demanded and denied, he shall grant an *Habeas Corpus*, or forfeit 500 l. to the prisoner. But note, the request must be made to such Judge in writing, and attested by two witnesses.

3. If the Sheriff or Goaler do not carry up the prisoner, and return the true causes of his detainer, within three days, if under twenty miles distance; or within ten days, if above twenty, and under an hundred miles; or within twenty days, if above an hundred miles, he forfeits 500 l. to the prisoner. Note, the prisoner must pay the charges of his carrying up; and the Judge, when



when he grants the writ, may order how much; but it must not be above 12 d. a mile.

If upon the return of such *Habeas Corpus*, it appear the prisoner is not charged with treason or felony, specially and plainly expressed, or for such matters as, by law, are notailable, the Judge shall discharge the prisoner upon bail.

4. If a person once so bailed out, shall again be imprisoned for the same offence, those that do it forfeit 500 l.

5. If there be high treason, or felony, plainly and specially expressed (that is, not only generally for treason or felony, but treason in conspiring to kill the King, or in counterfeiting the King's coin, or felony, for stealing the goods of such an one, to such a value, &c.) then the prisoner cannot have his *Habeas Corpus*, till first he has, on the first week of the term, or first day of the sessions of *Oyer and Terminer*, or general goal delivery, petitioned in open Court to be brought to his trial; and then if he be not brought to trial the next term or sessions following, on the last day thereof he shall be bailed; and if not indicted the second term or sessions, shall be discharged.

6. This act extends to all places within England and Wales; the Tower cannot be supposed to be exempted, nor Windsor castle, nor any such royal forts; for the words are general. And besides, there is a special act of Parliament, that unites the King's castles to the counties wherein they stand; there having been, it seems, some pretensions and ill practices, to hold them distinct, that therein they might detain men prisoners against law, and not admit any writ to enlarge them. For remedy whereof it was thus enacted;

Anno



Anno 13 Rich. Secundi.

Item. **I***T is ordained and assented, that the King's castles and goals, which were wont to be joined to the bodies of the counties, and be now severed, shall be rejoined to the same counties.*

Lastly, No person shall be sent prisoner out of England or Wales, into Scotland, Ireland, Jersey, Guernsey, Tangier, or any other place beyond the seas.

The provisos, and other clauses of this act, may be easily comprehended by the meanest capacities.

And as the law provides thus for our liberty, so it takes care, that those that are in custody shall not be abused or oppressed; to which purpose I shall here insert so much as is material and necessary to be known by all persons, who are so unhappy as to be prisoners, out of the statute of the 22d and 23d Charles 2, cap. 20, the words whereof are as follow:

**W***HEREAS persons that are under arrests, or committed to the custody of Sheriffs, Bailiffs, Goalers, or Keepers of prisons or goals, are much abused and wronged, by extorting of great fees, rewards, and other exactions, and put to great expences, under pretences of favour, or otherwise, whereby they are greatly oppressed, and many times ruined in their estates: For remedy thereof, be it enacted by the authority aforesaid, that if any under Sheriff, Bailiff, Serjeant at Mace, or other officer or minister whatsoever, shall at any time or times hereafter have in his or their custody any person or persons, by virtue or colour of any writ, process, or other warrant whatsoever, it shall not be lawful for such officer or officers to convey or carry, or cause to be conveyed or carried, the said person or persons to any tavern, ale-house, or other public victualling or drinking-house, without the free and voluntary consent of the said person or persons, so as to charge such prisoner with any sum of money for any*



any wine, beer, ale, victuals, tobacco, or any other things whatsoever, but what the said person or persons shall call for of his, her, or their own accord; and shall not demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other, or greater sum or sums, than what by law ought to be taken or demanded, for such arrest, taking or waiting (until such person or persons shall have procured an appearance, found bail, agreed with his or their adversaries, or be sent to the proper goal belonging to the county, city, town or place where such arrest or taking shall be) nor take and exact any other reward or gratuity for so keeping the said person or persons out of the goal or prison, than what he, she, or they, shall or will, of his, her or their own accord, voluntarily and freely give; nor take nor receive any other, or greater sum or sums, for each night's lodging, or other expences, than what is reasonable and fitting in such cases, or shall be so adjudged by the next Justice of the Peace, or at the next Quarter Sessions; and shall not cause or procure the said person or persons to pay for any other wine, beer, ale, victuals, tobacco, or other things, other than what the said person or persons shall voluntarily, freely, and particularly call for.

And that every under Sheriff, Goaler, Keeper of prison or goal, and every person or persons whatsoever, to whose custody any person or persons shall be delivered or committed, by virtue of any writ of process, or any pretence whatsoever, shall permit or suffer the said person or persons, at his and their will and pleasure, to send for, and have any beer, ale, victuals, and other necessary food, where and from whence they please; and also to have and use such bedding, linen, and other things, as the said person or persons shall think fit, without any purloining, detaining, or paying for the same, or any part thereof; nor shall demand, take or receive of the said person or persons, any other, or greater fee or fees whatsoever, for his, her, or their commitment, release or discharge;



discharge; or for his, her, or their chamber rent, than what is allowable by law, until the same shall be settled by three Justices of the Peace, whereof one to be of the Quorum, of each particular county, city, and town corporate, in their several precincts; and for the city of London and counties of Middlesex and Surry, by the two Lord Chief Justices of the King's Bench and Common Pleas, and the Lord Chief Baron, or any two of them, and the Justices of the Peace of the same, in their several jurisdictions.

And likewise, that the said Lord Chief Justices, Lord Chief Baron, and Justices of the Peace, in their several jurisdictions, and all Commissioners for charitable uses, do their best endeavours, and diligence, to examine and find out the several legacies, gifts and bequests, bestowed upon and given for the benefit and advantage of poor prisoners for debt, in the several goals and prisons in this kingdom, and to send for any deeds, wills, writings, and books of accounts whatsoever, and any person or persons concerned therein, and to examine them upon oath, to make true discovery thereof (which they have full power and authority hereby to do) and the same so found out and ascertained, to order and settle in some manner and way, that the prisoners hereafter may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors.

And that these accounts of the several legacies, gifts and bequests, given and bestowed upon the several prisoners for debt, within this kingdom, and the several rates of fees, and the future government of prisons, be signed and confirmed by the Lord Chief Justices, and the Lord Chief Baron, or any two of them for the time being, and the Justices of the Peace in London, Middlesex and Surry, and by the Judges for the several circuits, and Justices of the Peace for the time being, in their several precincts, and fairly written, and hung up in a table in every goal and prison, before the first day of November, 1671, and likewise be registred by each  
and



and every Clerk of the Peace, within his or their particular jurisdiction: And after such establishment, no other, or greater fee or fees than shall be so established, shall be demanded or received.

And whereas it is become the common practice of Goalers, and Keepers of Newgate, the Gatehouse at Westminster, and sundry other goals and prisons, to lodge together in one room, or chamber and bed, prisoners for debt, and felons, whereby many times honest gentlemen, tradesmen and others, prisoners for debt, are disturbed and hindered in the night-time from their natural rest, by reason of their fetters and irons, and otherwise much offended and troubled by their lewd and profane language and discourses, with most horrid cursing and swearing (much accustomed to such persons:) Be it enacted by the authority aforesaid, that it shall not be lawful hereafter for any Sheriff, Goaler, or Keeper of any goal or prison, to put, keep or lodge prisoners for debt and felons together, in one room or chamber, but that they shall be put, kept and lodged separate and apart one from another, in distinct rooms, upon pain that he, she, or they, which shall offend against this act, or the true intent and meaning thereof, or any part thereof, shall forfeit and lose his or her office, place or employment, and shall forfeit treble damages to the party grieved, to be recovered by virtue of this act: Any law, statute, usage or custom, to the contrary notwithstanding.

And to the end that Englishmen may more entirely enjoy their due freedoms, the prudence of our legislators have thought fit, from time to time, to remove encroachments thereupon, though under pretence of jurisdiction and Courts of justice; and to prohibit any exorbitant arbitrary power for the future, but that all things may be left to the calm and equal proceedings of law, and that most excellent method of trials by juries, one of the principal bulwarks of England's liberties. For an instance hereof, take the act following:

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*An Act for regulating of the Privy Council, and for taking away the Court commonly called the Star-Chamber.*

**W**HEREAS by the Great Charter, many times confirmed in Parliament, it is enacted, that no freeman shall be taken or imprisoned, or disseized of his freehold or liberties, or free customs, or be outlawed or exiled, or otherwise destroyed; and that the King will not pass upon him, or condemn him, but by lawful judgment of his peers, or by the law of the land. And by another statute, made in the fifth year of the reign of King Edward, it is enacted, that no man shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods nor chattels, seized into the King's hands, against the form of the Great Charter, and the law of the land. And by another statute, made in the twenty-fifth year of the reign of the same King Edward the third, it is accorded, assented, and established, that none shall be taken by petition, or suggestion made to the King, or to his Council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood, where such deeds be done, in due manner, or by process made by writ original at the common law; and that none be put out of his franchise or freehold, unless he be duly brought in to answer, and forejudged of the same by the course of the law: And if any thing be done against the same, it shall be redressed, and holden for none. And by another statute, made in the twenty-eighth year of the same King Edward the third, it is, amongst other things, enacted, that no man, of what estate or condition soever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited, without being brought in to answer by due process of law. And by another statute made in the forty-second year of the reign of the said King Edward the third, it



it is enacted, that no man be put to answer without presentment before Justices, or matter of record, or by due process, and writ original, according to the old law of the land: And if any thing be done to the contrary, it shall be void in law, and holden for error. And by another statute, made in the thirty-sixth year of the reign of the same King Edward the third, it is, among other things, enacted, that all pleas, which shall be pleaded in any Courts, before any of the King's Justices, or in his other places, or before any of his other Ministers, or in the Courts and places of any other Lords within the realm, shall be entered and enrolled in Latin. And whereas by the statute made in the third year of King Henry the seventh, power is given to the Chancellor, the Lord Treasurer of England for the time being, and the Keeper of the King's privy seal, or two of them, calling unto them a Bishop and a temporal Lord, of the King's most Honourable Council, and the two Chief Justices of the King's Bench and Common Pleas for the time being, or other two Justices in their absence, to proceed as in that act is expressed, for the punishment of some particular offences therein mentioned. And by the statute made in the twenty-first year of King Henry the eighth, the President of the Council is associated to join with the Lord Chancellor, and other Judges, in the said statute of the third of Henry the seventh mentioned; but the said Judges have not kept themselves to the points limited by the said statute, but have undertaken to punish where no law doth warrant, and to make decrees for things, having no such authority, and to inflict heavier punishments than by any law warranted.

2. And forasmuch as all matters examinable or determinable before the said Judges, or in the Court commonly called the *Star-Chamber*, may have their proper  
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remedy



remedy and redress, and their due punishment and correction, by the common law of the land, and in the ordinary course of justice elsewhere. And forasmuch as the reasons and motives, inducing the erection and continuance of that Court, do not cease ; and the proceedings, censures and decrees of that Court, have by experience been found to be an intolerable burthen to the subject, and the means to introduce an arbitrary power and government. And forasmuch as the council table hath of late times assumed unto itself a power to intermeddle in civil, and matters only of private interest, between party and party, and have adventured to determine of the estates and liberties of the subjects, contrary to the law of the land, and the rights and privileges of the subject, by which great and manifold mischiefs and inconveniences have arisen and happened, and much uncertainty, by means of such proceedings, hath been conceived concerning mens rights and estates ; for settling whereof, and preventing the like in time to come,

3. Be it ordained and enacted by the authority of this present Parliament, that the said Court, commonly called the *Star-Chamber*, and all jurisdiction, power and authority, belonging unto, or exercised in the same Court, or by any the Judges, Officers or Ministers thereof, be from the first day of August, in the year of our Lord God 1641, clearly and absolutely dissolved, taken away and determined. And that from the said 1st day of August, neither the Lord Chancellor, or Keeper of the Great Seal of England, the Lord Treasurer of England, the Keeper of the King's privy seal, or President of the Council, nor any Bishop, temporal Lord, Privy Counsellor, or Judge, or Justice whatsoever, shall have any power or authority to hear, examine or determine, any matter or thing whatsoever in the said Court, commonly called the *Star-Chamber*,  
or



or to make, pronounce, or deliver, any judgment, sentence, order or decree; or to do any judicial or ministerial act in the said Court. And that all and every act and acts of Parliament, and all and every article, clause and sentence in them, and every of them, by which any jurisdiction, power or authority, is given, limited or appointed, unto the said Court, commonly called the *Star-Chamber*, or unto all or any the Judges, Officers or Ministers thereof, or for any proceedings to be had or made in the said Court, or for any matter or thing to be drawn into question, examined or determined there, shall, for so much as concerneth the said Court of *Star-Chamber*, and the power and authority thereby given unto it, be from the said first day of August repealed, and absolutely revoked and made void.

4. And be it likewise enacted, that the like jurisdiction now used and exercised in the Court, before the President and Council in the marches of Wales; and also in the Court, before the President and Council established in the northern parts; and also in the Court commonly called the Court of the Duchy of Lancaster, held before the Chamberlain and Council of that Court; and also in the Court of Exchequer of the county palatine of Chester, held before the Chamberlain and Council of that Court; the like jurisdiction being exercised there, shall, from the said 1st day of August, 1641, be also repealed, and absolutely revoked, and made void, any law, prescription, custom, or usage, or the said statute, made in the 3d year of King Henry 7, or the statute made the twenty-first of Henry 8, or any act or acts of Parliament heretofore had or made, to the contrary thereof in any wise notwithstanding. And that henceforth no Court, Council or place of judicature, shall be erected, ordained, constituted or appointed, within this realm of England, or dominion of Wales, which shall have



have, use or exercise the same, or the like jurisdiction, as is or hath been used, practised or exercised in the said Court of *Star-Chamber*.

5. Be it likewise declared and enacted by authority of this present Parliament, that neither his Majesty nor his Privy Council have, or ought to have, any jurisdiction, power or authority, by English bill, petition, articles, libel, or any other arbitrary way whatsoever, to examine, or draw into question, determine or dispose of the lands, tenements, hereditaments, goods or chattels, of any of the subjects of this kingdom; but that the same ought to be tried and determined in the ordinary Court of Justice, and by the ordinary course of the law.

6. And be it further provided, and enacted, that if any Lord Chancellor, or Keeper of the great seal of England, Lord Treasurer, Keeper of the King's privy seal, President of the Council, Bishop, temporal Lord, Privy Counsellor, Judge or Justice whatsoever, shall offend, or do any thing contrary to the purport, true intent and meaning of this law, then he or they shall, for such offence, forfeit the sum of 500l. of lawful money of England, unto any party grieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgment thereupon, to be recovered in any Court of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, protection, wager of law, aid-prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted or allowed, nor any more than one imparlance. And if any person, against whom any such judgment or recovery shall be had as aforesaid, shall, after such judgment or recovery, offend again in the same, then he or they, for such offence, shall forfeit the sum of 1000l. of lawful money of England, unto any party grieved, his executors or administrators, who shall



shall really prosecute for the same, and first obtain judgment thereupon, to be recovered in any Court of record at Westminster, by action of debt, bill, plaint or information, in which no essoin, protection, wager of law, aid-prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted or allowed, nor any more than one imparlance. And if any person, against whom any such second judgment or recovery aforesaid shall, after such judgment or recovery, offend again in the same kind, and shall be thereof duly convicted by indictment, information, or any other lawful way or means, that such person so convicted shall be from thenceforth disabled, and become, by this act, incapable, *ipso facto*, to bear his and their said office and offices respectively; and shall be likewise disabled to make any gift, grant, conveyance, or other disposition of any of his lands, tenements, hereditaments, goods or chattels; or to take any benefit of any gift, conveyance or legacy, to his own use.

7. And every person so offending shall likewise forfeit and lose to the party grieved, by any thing done contrary to the true intent and meaning of this law, his treble damages, which he shall sustain and be put unto, by means or occasion of any such act or thing done; the same to be recovered in any of his Majesty's Courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, protection, wager of law, aid-prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, or allowed, nor any more than one imparlance.

8. And be it also provided and enacted, that if any person shall hereafter be committed, restrained of his liberty, or suffer imprisonment, by the order or decree of any such Court of *Star-Chamber*, or other Court aforesaid, now, or at any time hereafter, having or pretending



pretending to have the same jurisdiction, power or authority, to commit or imprison as aforesaid; or by the command or warrant of the King's Majesty, his heirs and successors, in their own person; or by the command or warrant of the Council Board, or of any of the Lords, or others of his Majesty's Privy Council; that in every such case, every person so committed, restrained of his liberty, or suffering imprisonment, upon demand or motion made by his counsel, or other employed by him for that purpose, unto the Judges of the Court of King's Bench, or Common Pleas, in open Court, shall without delay, upon any pretence whatsoever, for the ordinary fees usually paid for the same, have forthwith granted unto him a writ of *Habeas Corpus*, to be directed generally unto all and every Sheriff, Goaler, Minister, Officer, or other person, in whose custody the person so committed or restrained shall be. And the Sheriff, Goaler, Minister, Officer, or other person, in whose custody the person so committed or restrained shall be, shall, at the return of the said writ, and according to the command thereof, upon due and convenient notice thereof given unto him, at the charge of the party who requireth or procureth such writ, and upon security by his own bond given to pay the charge of carrying back the prisoner, if he shall be remanded by the Court to which he shall be brought, as in like cases hath been used, such charges of bringing up and carrying back the prisoner to be always ordered by the Court, if any difference shall arise thereabout, bring, or cause to be brought, the body of the said party, so committed or restrained, unto and before the Judges or Justices of the said Court, from whence the same writ shall issue, in open Court; and shall then likewise certify the true cause of such his detainer or imprisonment; and thereupon the Court, within three court days after such  
return



return made and delivered in open Court, shall proceed to examine and determine whether the cause of such commitment, appearing upon the said return, be just and legal, or not; and shall thereupon do what to justice shall appertain, either by delivering, bailing, or remanding the prisoner. And if any thing shall be otherwise wilfully done, or omitted to be done, by any Judge, Justice, officer, or other person aforementioned, contrary to the direction and true meaning hereof, then such person so offending shall forfeit to the party grieved his treble damages, to be recovered by such means, and in such manner, as is formerly in this act limited and appointed for the like penalty to be sued for and recovered.

9. Provided always, and be it enacted, that this act, and the severall clauses therein contained, shall be taken and expounded to extend only to the Court of *Star-Chamber*: And to the said Courts holden before the President and Council in the marches of Wales: And before the President and Council in the northern parts: And also to the Court commonly called the Court of the Dutchy of Lancaster, holden before the Chancellor and Council of that Court: And also in the Court of Exchequer of the county palatine of Chester, held before the Chamberlain and Council of that Court: And to all Courts of like jurisdiction to be hereafter erected, ordained, constituted, or appointed as aforesaid; and to the warrants and directions of the Council Board, and to the commitments, restraints and imprisonments of any person or persons made, commanded or awarded by the King's Majesty, his heirs or successors in their own person, or by the Lords and others of the Privy Council, and every one of them.

And lastly, provided and be it enacted, that no person or persons shall be sued, impleaded, molested or

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troubled,



troubled, for any offence against this present act, unless the party supposed to have so offended shall be sued or impleaded for the same within two years, at the most, after such time wherein the said offence shall be committed.

*The Comment.*

**T**HE Court of *Star-Chamber* (so called, because held in a chamber at Westminster, the roof of which is garnished with golden stars) was not originally erected, but confirmed and established, by the statute of 3 Henry 7, cap. 1; for there had before been some such jurisdiction, as Coke observes, 4 Inst. fol. 62, yet there is reason to believe, that it grew up rather by connivance and usurpation than any due course of law. The crimes it pretended to punish, were the exorbitant offences of great men, whom inferior judges and jurors, (though they should not) would in respect of their greatness be afraid to offend, bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, libelling, challenges, duels, &c. Their proceedings were by English bill, and process under the great seal; and the punishments by them inflicted were fines, imprisonment, pillory, cutting off ears, &c. But whatever pretences there were for setting up this Court at first, it is certain it was made use of as a property of arbitrary power, to crush any whom the ruling Ministers and favourites had a mind to destroy; and indeed there were three things in the very nature of this Court which were destructive to the original constitution of our English government and liberties. They proceeded without juries. They pretended to a power to examine men upon their oaths, touching crimes by them supposed to be committed; which is contrary to all law or reason; for, no man is bound to accuse himself. The Judges of this Court proceeded by no known laws or



or rules, but were left at liberty to act arbitrarily, and according to their own pleasures; whereas the law of England hates to leave to any such an unlimited power, but as it marks out the several species of crimes, such or such an act shall be treason, this felony, that petty-larceny, &c. so it awards certain and positive punishment, proportionate to each of them. Therefore this Court being found a grievance to the subject, was by this act dissolved and taken away.

And to the intent nothing of the like kind should by any other name be practised for the future, it is declared and enacted, that the King and his Privy Council shall not question or dispose of the lands or goods of any subjects: And if they do, each Privy Counsellor present forfeits 500 l. to the party grieved.

A Clause in the Act of 31 Charles 2, Cap. 1.

**W**HEREAS by the laws and customs of this realm, the inhabitants thereof cannot be compelled, against their wills, to receive soldiers into their houses, and to sojourn them there, be it declared and enacted by the authority aforesaid, that no officer, military or civil, nor any other person whatsoever, shall from henceforth presume to place, quarter or billet, any soldier or soldiers upon any subject or inhabitant of this realm, of any degree, quality or profession whatsoever, without his consent: And that it shall and may be lawful for every such subject and inhabitant to refuse to sojourn or quarter any soldier or soldiers, notwithstanding any command, order, warrant, or billeting whatsoever.

Having thus collected together divers of the most remarkable and advantageous of our laws, whereby the liberties of Englishmen are guarded and secured; since the best of laws are but insignificant cyphers, if not honestly put in execution; and since in the execution of



our laws, JURIES are mainly concerned, who, if ignorant of their duty, or corrupt, or over-awed, and not daring to make use of that just power, wherewith the law hath invested and intrusted them, may give up all those precious privileges, and subject us to the worst kind of slavery, under pretence of law: Therefore here in the last place, for the information of my honest countrymen, the freeholders of England, and others, who in corporations are daily called to this important service, I shall subjoin a brief discourse of JURIES.

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### S E C T. I.

*Of the Advantage Englishmen enjoy by this Trial by Juries, above any other Nation under Heaven.*

**I**T is one of the miserable follies of depraved nature, that it commonly flights present enjoyments, and rarely rates the good things it possesses at their true value, till it is deprived of them. This grand privilege of trials by our country, that is by JURIES, as it seems to have been as ancient as the government, or first form of policy in this island; for it was not unknown to the ancient Britons (as appears by their books and monuments of antiquity) practised by the Saxons, and confirmed since the invasion of the Normans, by Magna Charta, as you have heard, and continual usage; so it is a thing of the highest moment, and an essential felicity to all English subjects. For look abroad in France, Spain, Italy, or indeed almost where you will, and observe the miserable condition of the inhabitants, either entirely subjected to the arbitrary lusts of tyrants, who plunder, dismember or slay them, according as the humour takes them, and many times without the least provocation, meerly for sport, and to gratify a savage cruelty; or, at best, you will behold them under such laws, as render their lives, liberties and estates, liable



ble to be disposed of, at the discretion of strangers, appointed their Judges, most times mercenary, and creatures of prerogative; sometimes malicious and oppressive, and too often partial and corrupt. Or suppose them never so just and upright, yet still has the subject no security against subornations, and the attacks of malicious, false and unconscionable witnesses; yea, when there is no sufficient evidence, upon meer suspicions, they are obnoxious to the tortures of the rack, which often make an innocent man confess himself guilty, meerly to get out of present pain; or if he do, with invincible courage, endure the question (as they call those torments) he is many times so spoiled in his limbs, as he scarce ever is his own man again.

Whereas such has been the goodness of God, and the prudent care of our ancestors, that, to our inestimable happiness, we are born, and live, under a mild and righteous constitution, where all these mischiefs may be prevented; where none can be legally condemned, either by the power of superior enemies, or the rashness or ill will of any Judge, nor by the bold affirmations of profligate evidence; for, by a fundamental law in our government, no man's life (unless it be in Parliament, which is a supreme Court, and it is supposed will never do any man wrong) shall be touched for any crime whatsoever, but upon being found guilty on two several trials. (for so may that of the Grand and Petty Jury be called) and the judgment of twice twelve men at least, all of his own condition and neighbourhood, and upon their oaths (Coke, 3d part of Inst. p. 40) that is to say, twelve or more to find the bill of indictment against him, and twelve others to give judgment upon the general issue of *not guilty*; all which jurors must be honest, substantial, impartial men, and being neighbours of the party accused, or place where the supposed fact was



was committed, cannot be presumed to be unacquainted either with the matters charged, the prisoner's course of life, or the credit of the evidence; and all these must first be fully satisfied in their consciences that he is guilty, and so unanimously pronounce him upon their oaths, or else he cannot be condemned; for the office and power of these juries is judicial; they only are the judges, from whose sentence the indicted are to expect life or death; upon their integrity and understanding the lives of all that are brought into judgment do ultimately depend; from their verdict there lies no appeal; by finding guilty or not guilty, they do complicate resolve both law and fact.

Judges are made by prerogative, and many times heretofore they have been preferred by corrupt Ministers of State, and may be so again in time to come, and such advanced as would serve a present turn, not always those of the most integrity and skill in the laws: Their places are so honourable and profitable, and their tenure so ticklish, viz. *durante beneplacito*, meerly during pleasure, that they lie under no small temptations, which perhaps with some may be nevertheless unlikely to prevail; for their having generally been wont to take fees, they are concerned in so many causes, that they are the oftner subject to be tempted, and are so few, that they may be the easier corrupted: They cannot be challenged, and may be apt to think themselves above any action, and thence be encouraged to strain a point now and then. The major part of them agreeing is enough; they are never sworn at each particular trial, nor ever at all but once, and that exceeding generally. I say, all these things may possibly happen to bias some Judges, (for I intend not the least reflection hereby on any of those honourable persons, who now deservedly sit upon our seats of justice;) but nothing of that kind can reasonably



sonably happen to a jury, for, 1. They are returned by a sworn officer. 2. Must be men of a clear reputation, and competent estate. 3. Being neighbours, they may know something of the business on their own knowledge. 4. Their office is but a trouble, not accompanied with any great honour, nor any profit at all. 5. They are all solemnly sworn to each particular cause. 6. The party may challenge thirty-five in case of treason, and twenty of them in felony, without shewing any cause, and as many more as he can assign cause against. 7. Of the Grand Jury, twelve at least must join in the verdict, and of the Petty Jury, every man of the twelve must consent upon his oath, or else 'tis all nothing. And lastly, if they give a corrupt verdict between party and party, they are liable to an *attaint*. [But I do not find any attaint lies in criminal causes, where the King is a party.]

Now let any man of sense consider, whether this method be not more proper for *bolting* out the truth, for finding out the *guilty*, and preserving the *innocent*, than if the whole decision were left to the examination of two or three, whose *interest*, *passion*, *haste*, or *multiplicity* of business, may easily betray them into error.

Deservedly therefore is this trial by juries ranked amongst the choicest of our fundamental laws, which whosoever shall go about openly to *suppress*, or craftily to *undermine*, and render only a formality, does *ipso facto* attack the government, brings in an arbitrary power, and is an enemy and traitor to his King and country; for which reason English Parliaments have all along been most zealous for preserving this great jewel of liberty, trials by juries having no less than fifty-eight several times, since the Norman conquest, been established and confirmed by the legislative power, no one privilege



privilege besides having been ever so often remembered in Parliament\*.

## S E C T. II.

*What Persons ought to be Jurymen, and how qualified.*

**A**S the office of juries is of such great importance, so the wisdom of our law has provided, that the same shall be supplied with persons of ability, honesty, integrity, and indifferency; for, as my Lord Coke saith, he that is of a jury must be *liber homo*, that is, not only a *freeman*, and not bond, but also one that hath such *freedom of mind*, as he stands indifferent as he stands unsworn. 2. He must be *legalis*, and by the law every juror that is returned for the trial of any issue or cause, ought to have three properties. 1. He ought to be dwelling most *near* to the place where the question is moved. 2. He ought to be most sufficient, both for understanding and competency of estate. 3. He ought to be least suspicious, that is, to be indifferent as he stands unsworn; but a man's being excommunicated, as was said before, is no bar to his being a jurymen, much less his being a dissenter, or non-frequenter of church ceremonies, if he be otherwise qualified in estate and understanding; for at that rate, if Popery should

\* “ Every new tribunal, erected for the decision of facts, without the intervention of a jury (whether composed of Commissioners of the revenue, or any other standing Magistrates) is a step towards establishing aristocracy, the most oppressive of absolute governments. It is therefore a duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable constitution in all its rights; to restore it to its ancient dignity, if at all impaired by different value of property, or otherwise deviated from its first institution; to amend it wherever it is defective; and, above all, to guard, with the most jealous circumspection, against the introduction of new and arbitrary methods of trial, which, under a variety of plausible pretences, may in time imperceptably undermine this best preservative of English liberty.”

*Blackst. Com.*

ever



ever get uppermost, no Protestant at all would be capable of being a Jurymen, because a nonconformist to holy church. Now if no statute excludes Protestants unconvicted of any crime, or Dissenters (*quatenus tales*) to serve on juries, I should think we ought to wait at least till an act of Parliament be made to that purpose, before we deny them *liberem legem*, and to act otherwise, in my opinion, seems not only unwarrantable, but a daring usurpation of legislative power: In a word, Jurors must be free of and from all manner of bondage, obligations, affections, relations and prejudices; they must be the peers or equals of the party they are to try; they must be of full age, 21 years old, or upwards, not outlawed, never attainted nor convicted of treason, felony, false verdict, perjury, or adjudged infamous; they were anciently all Knights, as we read in Glanvil and Bracton, and they must still be persons of worth and repute; and as they are returned by a sworn officer, the Sheriff, so they of the Petty Jury must be every one sworn every several trial, by a particular oath, the more to remind them of their duty. Nay, it should seem in ancient times, though the office and duty were still the same as at this day; yet their honour and dignity were much greater: The *mirror of justices* makes no scruple to call them Judges; and Dr. Cowel, in his *Interpreter*, tells us, *Juries were anciently associates and assistants to the Judges of the Court in a kind of equality*, whereas now-a-days they attend them in great humility: And cites the Customary of Normandy and Lambard, as being of the same sentiments. But I desire not to bring in innovations, only that Englishmen may preserve their ancient rights and privileges, inform themselves of their duty and office by law, that so they may uprightly discharge the same to God and the King, and their fellow subjects.



## S E C T. III.

*Of Grand Juries, their Duty, and the great Importance of their Office.*

**J**URIES are of two sorts: 1. The *Grand Jury*, so called, both because it consists of a greater number than 12, as commonly 21, 19, 17, or the like, [but note, they can make no verdict or presentment, unless 12 of them at least agree, and then what they do is valid, though the rest do not consent;] as also because generally they are of the greater quality, and likewise in respect of their power, because the extent of their office is more great and general, as extending to all offences, throughout the whole county for which they serve. 2. The *Petty Jury* in cases criminal, called commonly the *Jury of life and death*, which always consists of 12 men, neither more nor less, who must every man agree, or else it is no verdict.

The Oath of a Grand Jurymen, as I find it inserted in the Collection, intituled, *The Book of Oaths*, p. 216, is as follows:

**Y**E shall truly enquire, and due presentment make of all such things as you are charged withal on the King's behalf: The King's counsel, your own and your fellows, you shall well and truly keep, and in all other things the truth present: So help you God, and by the contents of this book.

But according to modern practice, as we find it published in the account of the proceedings against the Right Honourable the Earl of Shaftsbury, said to be published by his Majesty's special command, is expressed somewhat more largely,

The Oath administered to the Grand Jury, as follows:

**Y**OU shall diligently enquire, and true presentment make of all such matters, articles and things, as shall be given you in charge, as of all other matters and things as shall come to your knowledge touching this present service;  
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the King's counsel, your fellows and your own, you shall keep secret : You shall present no person for hatred or malice, neither shall you leave any one unpresented for fear, favour or affection, for lucre or gain, or any hopes thereof ; but in all things you shall present the truth, the whole truth, and nothing but the truth, to the best of your knowledge. So help you God.

The office of a Grand Jury, or Grand Inquest, for by both these names it is promiscuously called, is principally concerned in two things, *presentments* and *indictments*, the difference of which is thus : The first is, when the Jury themselves, of their own knowledge or enquiry, do take notice of some crime, offence or nuisance, to the injury of the public, which they think fit should be punished or removed ; and in order thereunto, do give the Court notice thereof in writing, briefly and without form, only the nature of the thing, and the person's name, and the place. And this is called a *presentment*, being the matter whereon to form an indictment, from which the presentment differs in these two respects. 1. In that it is always originally the act of the Grand Jury. And 2. That it is not yet drawn up in form ; whereas indictments are commonly drawn up either by the order of the Court, or at the instance of some prosecutor, and are brought before, and delivered unto the Grand Jury, and the witnesses sworn attend them, who examine the said witnesses, and, as they think fit, return the indictments indorsed either *billa vera*, that is, a true bill, or *ignoramus*, we are ignorant, that is, we do not find the matter, or there does not appear to us such sufficient grounds for the accusation, that the person's life and reputation should be brought into question.

From whence it appears that the end of their office is likewise twofold. 1. To enquire after, and give notice of all crimes, offences, nuisances, &c. in the



county for which they serve, which, by reason of their inhabitancy and estates therein, they are presumed to have best opportunity to discover, and to find bills against malefactors, where there are good grounds for the same, that so they may be brought to trial, if they are forthcoming, or may be proceeded against to the outlawry, if they are fled for their said offences. 2. To preserve the innocent from the disgrace and hazards which ill men may design to bring them to, out of malice, or through subornation, or other sinister ends ; for so tender is the law of the reputation and life of a man, that it will not suffer the one to be sullied, by the party's holding up his hand at the bar, and the other endangered by a trial, until first the matter and evidence against him have been scanned, examined, and found by a Grand Jury, upon their oaths, against him. Therefore you see, by their oaths, they are sworn not only to enquire, but *diligently* to enquire ; not to be negligent or slothful, nor take things upon trust, or hurry them over carelessly, but to weigh the circumstances, and sift the witnesses, and search out the truth of such informations as come before them ; and to reject the indictment, if it be not sufficiently proved ; and if they have reasonable suspicion of malice, subornation, or wicked designs against any man's life or estate, in such as offer to come and swear to the bill of indictment, they are bound by law, as well as in conscience, to use all diligence to discover the villainy ; and if it appears to them, whereof they are the legal judges, to be a conspiracy, or malicious conspiracy, against the accused, they are bound not only to reject such bill of indictment, but forthwith to indict all the conspirators, with their associates and abettors : And that this is a main part of a Grand Jury's office, appears not only from legal reason, but by an express statute, viz. 25 Edward



Edward 3, 4, and 42 Edward 3, 3, which says, *that for preventing mischiefs done by false accusers, none shall be put to answer, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done*; that is to say, by a Grand Jury.

The grounds upon which Grand Juries are to proceed in giving their verdicts, are either,

1. From their own knowledge, and so they may find an indictment against a person, though there be never a witness at all to it; and a Petty Jury may in like manner find a person guilty of a felony or murder whereof he stands indicted, though no witnesses appear against him to prove it; and the reason thereof is, because the Juries being always of the vicinage, the law supposes they may know the matter of their own knowledge, and therefore in all such cases when a Jury is charged with a prisoner, and after indictment read, witnesses fail to appear, the Court always speaks thus to the Jury: *Gentlemen, here is A. B. stands indicted of a crime, but here is no witness come against him; so that unless, on your own knowledge, you know him guilty, you must acquit him*: And certainly if the Jury's knowledge of a man's guilt is enough to condemn him, I see not why their personal knowledge of a prisoner's innocence, or of the witnesses swearing falsely, should not be sufficient to acquit him.

2. The other ground upon which the Grand Juries are to proceed, is *testimony of witnesses*; and this is called evidence, because it ought to be such as may make the matter clear, manifest, plain and evident to the Jury; and of this evidence the Jury are the proper and only judges; therefore they ought, according to their oath, diligently to enquire into the quality, repute and circumstances of the witnesses, the likelihood of what they depose, and whether they do not swear out of malice, subornation,



subornation, self-interest, combination, or some ill design ; which to discover they will do well to examine them apart, to note their variations and contradictions, to ask them sudden questions ; and what questions are pertinent, not the Judges, but the Jury only can determine ; for they may know how to make use of them towards discovery of the truth, though the Judge do not, and it is they are upon their oaths, not he ; it is they must satisfy their own consciences, the Judge has nothing to do to intermeddle ; he is bound by their verdict : Let the witnesses be never so rampantly positive, yet if the Jurors have good and reasonable grounds not to believe them, they will, they must remain as ignorant to the party's crime as before : We find this expressly asserted for law in our books, as Style's reports, lib. 11, though there be witnesses who prove the bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary : So Coke, lib. 6. The Judges use to determine *who* shall be sworn, and who shall be produced as evidence to the Jury ; but the Jury are to consider what credit or authority the same is worthy of. If a Grand Jury are not judges of evidence, they signify nothing. If, as some would persuade us, because people swear desperately, though they do not believe them, they shall be bound to find the bill, then they signify nothing, and are no security to preserve innocency. A lewd woman once resolved to indict the then Archbishop of Canterbury for a rape ; she swore it, no doubt, very heartily ; according to this new doctrine of going according to evidence, the Jury must have presently found the bill, the Archbishop must have been committed to prison, suspended from ecclesiastical jurisdiction, his goods and chattels throughout England inventoried by the Sheriffs ; would it, think you, in that case, have been a good excuse for the Jury, to have said,



said, that though they believed in their conscience the baggage swore false, yet she swearing it positively, they, as so many parish clerks, were but to say *amen* to her oath of the fact, and to find *billa vera* against that eminent prelate? And if the Jury be judges of the credibility of evidence in this case, and may go contrary to it, why I pray may they not have the same liberty where they find good cause in others?

If an indictment be laid against a man for criminal words, said to be uttered in a colloquium, or discourse, though the witnesses roundly swear all the express words in the indictment, yet unless they will relate and set forth the substance of the whole talk, it is impossible the Jury should judge of the matter; for the foregoing and subsequent words may render expressions that are innocent and loyal, which taken to halves may be rank treason; as if one should say, *to affirm the King has no more right to the crown of England than I have (which is the opinion of the Jesuits, of his Majesty, if once excommunicated by the Pope) is detestable treason*; and two men at some distance, not well hearing, or remembering, or maliciously designing against his life, should swear—that he said *the King had no more right to the crown than he had*. Now, that the man did utter these very words is true; but if you ask the evidence the rest of the colloquium, they shall tell you there was much more discourse, but they cannot remember it; what satisfaction is this to a Jury? Or would it not be hard, for a man to be put to hold up his hand at the bar, under the frightful charge of treason in this case? Or if a minister, in his sermon, should recite that of the psalms, *the fool hath said in his heart there is no God*: Jesuited evidence may now come and charge him with blasphemy, and swear that he said, *there was no God*: And ask them what expressions besides he used, may excuse themselves,



felves, and say, it is a great while ago, we cannot remember a whole sermon; but this we also positively swear, *he said there was no God.*

The enquiry of a Grand Jury should be suitable to their title, a *grand enquiry*; else instead of serving their country, and presenting real crimes, they oppress the innocent, as in the case of Samuel Wright and John Good, at a sessions in the Old Baily, about December, 1681. Good indicts Wright for treasonable words, and swore the words positively; but after a grand enquiry, the Grand Jury found that Wright only spoke the words as of others; thus, *they say so and so*—and concluded with this,—*they are rogues for saying it*: And also Good at last confessed, that Wright was his master, and corrected him for some misdemeanors; and then to be revenged, he comes and swears against him, which he confessed he was instigated to by one Powel: So the Grand Jury finding it to be but malice, returned the bill *ignoramus*; whereas, if they had not examined him strictly, they had never discovered the intrigue, and the master had causelessly been brought to great charge, ignominy and hazard. The judicious Dalton, p. 539, says well, *no less care or concern at all lies on the Grand Jury than does on the Petty Jury*: People may tell you, *that you ought to find a bill against any probable evidence, for it is but matter of course, a ceremony, a business of form, only an accusation; the party is to come before another Jury, and there may make his defence.* But if this were all, to what purpose have we Grand Juries at all? Why are the wisest, best men in the county, for such they are or should be, troubled? Why are they so strictly sworn? Do not flatter yourselves, you of the Grand Jury are as much upon your oaths as the Petty Jury; and the life of the man, against whom the bill is brought, is in your hands. The Lord Coke, 3 Inst. 33, plainly



33, plainly calls the Grand Jurymen all wilfully forsworn and perjured, if they wrongfully find an indictment; and if in such a case the other Jury, through ignorance, &c. should find the person guilty too, you are guilty of his blood as well as they: But suppose he get off there, do you think it nothing to accuse a man upon your oaths of horrid crimes, your very doing of which puts him, though never so innocent, to disgrace, damage, danger of life, and makes him liable to outlawry, imprisonment, and every thing but death itself? and that too, for ought you know, may wrongfully be occasioned by your rash verdict gaining credit, and giving authority to another Jury to find him guilty: For if the Petty Jury find a man guilty never so unjustly, the law suffers no attain or other punishment to lie against them, for this very reason, because another Jury, viz. the Grand Inquest, as well as they, have found him guilty. If a Grand Jury find a bill wrongfully against a person, and it prove never so much to his damage, he has no remedy; for being upon their oaths, the law will not suppose any malice. One of the Grand Jury cannot afterwards be of the Petty Jury, and why? because, says the law, he has once already found the party guilty, and if he should not again, he must perjure himself. From all which it appears, what a weight and stress the law puts upon the verdict of a Grand Jury; and it is remarkable too, that the law directs them only to say, either *billa vera*, it is true; or *ignoramus*, we know not; and never *that it is not true*: Which shews, that if they be doubtful, or not fully satisfied, the indictment must be indorsed not *billa vera*, we know it is true; but *ignoramus*, we doubt it, we do not know it, we are not certain it is true. If they find a bill where they ought not, they wound their own consciences, and do an irreparable damage to the party;



but where they do not find the bill, there is no harm done to any body, for another indictment may be brought when there is better evidence.

#### S E C T. IV.

*That Juries are Judges of Law in some Respects, as well as of Fact.*

**A**MONGST other devices, to undermine the rights and power of Juries, and render them insignificant, there has an opinion been advanced, that they are only judges of fact, and are not at all to consider the law: So that if a person be indicted for a fact, which really is no crime in itself by law, but is worked up by words of form, as *treasonably, seditiously, &c.* if the fact be but proved to be done, though the said wicked circumstances do not appear, they shall be supplied by the law, which you are not to take notice of, but find the bill, or bring in the person guilty, and leave the consideration of the case in law to the Judges, whose business it is.—Thus some people argue, but it is an apparent trap, at once to perjure ignorant Juries, and render them so far from being of good use, as to be only tools of oppression to ruin and murder their innocent neighbours with the greater formality: For though it be true, that matter of fact is the most common and proper object of a Jury's determination, and matter of law that of the Judges, yet, as law arises out of, and is complicated with fact, it cannot but fall under the Jury's consideration. Littleton, sect. 368, teaches us, that the Jury may, at their election, either take upon them the knowledge of the law, and determine both the fact and law themselves, or else find the matter specially, and leave it to the Judges: It is by applying matter of fact and law together, and from their due consideration of, and right judgment upon both,



both, that a Jury brings forth their verdict. Do we not see in most general issues, as upon not guilty pleaded in trespass, breach of the peace, or felony, though it be matter in law, whether the party be a trespasser, a breaker of the peace, or a felon, yet the Jury do not find the fact of the case by itself, leaving the law to the Court, but find the party guilty or not guilty generally? So that, though they answer not the question singly, what is law? yet they determine the law in all matters where issue is joined. Is it not every day's practice, when persons are indicted for murder, the Jury does not only find them guilty, or not guilty, but many times, upon hearing and weighing of circumstances, brings them in either guilty of the murder, or else only of manslaughter, *per misadventure*, or *sedesendo*, as they see cause? Besides, as Juries have ever been vested with such power by law, so to exclude from, or disseize them of the same, were utterly to defeat the end of their institution. For then if a person should be indicted for doing any common innocent act, if it be but cloathed and disguised in the indictment with the name of treason, or some other high crime, and proved by witnesses to have been done by him, the Jury, though satisfied in conscience that the fact is not any such offence as it is called, yet because, according to this fond opinion, they have no power to judge of the law, and the fact charged is so fully proved, they should at this rate be bound to find him guilty: And being so found, the Judge may pronounce sentence against him; for he finds him a convicted traitor, &c. by his peers, and so Juries should be made meer properties, to do the drudgery, and bear the blame of unreasonable prosecutions. But all this is absurd, and abhorred by the wisdom, justice, and mercy of our laws.

In every indictment, information, &c. there are certain words of course, called matter of form, as



*maliciously, seditiously, with such or such an intention, &c.* And these are sometimes raised by a just and reasonable implication in law, and sometimes are thrust in meerly to raise a pretence or colour of crime, where there is really none. Jurymen ought well to understand this distinction, where the act, or naked matter of fact charged, is in itself a crime or offence against law; as killing a man, levying war against the King, &c. there the law does in pleading require, and will supply those words; and if the Jury do find, and are satisfied, that the substance of the charge is such a crime, and the person guilty thereof, they are bound to find it, though no direct proof be made of those circumstantials. But where the act, or matter of fact, is in itself innocent or indifferent, there the purport of these words, as that it was done *maliciously*, or with *such or such a design*, is necessary to be proved; for else there is no crime, and consequently no fit matter to be put to trial. In which case the Grand Jury is bound, in conscience and law, to return an *ignoramus*, and a Petty Jury, *not guilty*.

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#### S E C T. V.

*That Juries are not finable, nor any Way to be punished, under Pretence of going contrary to Evidence, or against the Judges Directions.*

**M**UCH of what we have said of Grand Juries is also applicable to Petty Juries, so that we need not repeat it; only we must answer one objection. Some Jurymen may be apt to say,—if we do not find according to evidence, though we have reason to suspect the truth of what they swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may fine us, &c.—I answer, this is a vain fear: No Judge dares offer any such thing; you are the proper judges of the matters before you, and your souls are



are at stake; you ought to act freely, and are not bound, though the Court demand it, to give the reasons why you bring it in thus, or thus; for you of the Grand Jury are sworn to the contrary, viz. *to keep secret your fellows counsel and your own*: And you of the Petty Jury are no way obliged to declare your motives; it may not be convenient. It was a notable case, before the Chief Justice Anderson, in Queen Elizabeth's days: A man was arraigned for murder; the evidence was so strong, that eleven of the Jury were presently for finding him guilty; the twelfth man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the prisoner not guilty. The Judge, who had several times admonished this Jurymen to join with his fellows, being surprised, sent for him, and discoursed him privately; to whom, upon promise of indemnity, he at last owned that he himself was the man that did the murder, and the prisoner was innocent, and that he was resolved not to add perjury, and a second murder to the first.—But to satisfy you that a Jury is no way punishable for going according to their conscience, though against seeming evidence, and the reasons why they are, and ought not to be questioned for the same, I shall here recite an adjudged case, that of *Bushel*, in the 22d year of King Charles 2, reported by the learned Sir John Vaughan, whose book was licensed by the then Lord Chancellor, the Lord Chief Justice North, and all the Judges then in England: The case begins fol. 135, and continues to 150, the whole well worth reading; but I shall only select certain passages—

The Case was this.

**B**USHEL, and others of a Jury, having at a sessions not found Pen and Mead, two Quakers, guilty of a trespass, contempt, unlawful assembly and tumult, whereof



whereof they had been indicted, were fined 40*l.* a man, and committed till they should pay it. Busbel brings his Habeas Corpus, and upon the return it appeared he was committed,—for that contrary to law, and against full and clear evidence, openly given in Court, and against the directions of the Court in matter of law, they had acquitted the said *W. P.* and *W. M.* to the great obstruction of justice, &c. which upon solemn argument was by the Judges resolved to be an insufficient cause of fining and committing them; and they were discharged, and afterwards brought actions for their damage. The reasons of which judgment are reported by Judge Vaughan, and amongst them he useth these that follow, which I give you in his own words.

Fol. 140. One fault in the return is, that the Jurors are not said to have acquitted the persons indicted against full and manifest evidence, corruptly, and knowing the evidence to be full and manifest against the said persons indicted; for how manifest soever the evidence, if it were not manifest to them, and that they believed it such, it was not a finable fault, nor deserving imprisonment: Upon which difference, the law of punishing Jurors for false verdicts principally depends.

And fol. 141. I would know whether any thing be more than for two men, Students, Barristers or Judges, to deduce contrary and opposite conclusions out of the same case in law? And is there any difference, that two men should infer distinct conclusions from the same testimony? Is there any thing more known, than that the same author, and place in the author, is forceably urged to maintain contrary conclusions, and the decision hard which is in the right? Is any thing more frequent in the controversies of religion, than to press the same text for opposite tenets? How then comes it to pass, that two persons may not apprehend with reason and honesty what a witness, or many say, to prove the understanding of one, plainly one thing, but in the apprehension



*sion of the other, clearly the contrary thing? Must therefore one of these merit fine and imprisonment, because he doth that which he cannot otherwise do, preserving his oath and integrity? And this is often the case of the Judge and the Jury.*

*And fol. 142. I conclude therefore, that this return, charging the prisoners to have acquitted P. and M. against full and manifest evidence, first and next, without saying, that they did know and believe that evidence to be full and manifest against the indicted persons, is no cause of fine and imprisonment.*

*In the margin of that, fol. 142, it is thus noted: Of this mind were ten Judges of the eleven. The Chief Baron Turner gave no opinion, because not at the argument.*

*And in the same fol. 142 he saith, the verdict of a Jury, and evidence of a witness, are very different things in the truth and falsehood of them: A witness swears but to what he hath heard or seen generally, or more largely to what hath fallen under his senses: But a Jurymen swears to what he can infer and conclude from the testimony of such witnesses, by the act and force of his understanding, to be the fact enquired after; which differs nothing in reason, though much in the punishment, from what a Judge, out of various cases considered by him, infers to be the law in the question before him.*

*If the meaning of these words, finding against the direction of the Court, in matter of law, be, that if the Judge, having heard the evidence given in Court (for he knows no other) shall tell the Jury, upon this evidence, the law is for the plaintiff, or for the defendant, and you are under the pain of fine and imprisonment to find accordingly, and the Jury ought of duty so to do; then every man sees, that the Jury is but a troublesome delay, great charge, and of no use in determining right and wrong; and therefore the trials by them may be better abolished than continued; which were a strange*  
*new.*



new-found conclusion, after a trial so celebrated for many hundred years.

It is true, if the Jury were to have no other evidence for the fact but what is deposed in Court, the Judge might know their evidence, and the fact from it, equally as they, and so direct what the law were in the case; though even then, the Judge and Jury might honestly differ in the result from the evidence, as well as two Judges may, which often happens; but the evidence which the Jury have of the fact, is much otherwise than that. For,

1. Being returned of the vicinage, where the cause of action ariseth, the law supposeth them thence to have sufficient knowledge to try the matter in issue (and so they must) though no evidence were given on either side in Court; but to this evidence the Judge is a stranger.

2. They may have evidence from their own personal knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false; but to this the Judge is a stranger, and he knows no more of the fact than he hath learned in Court, and perhaps by false depositions, and consequently knows nothing.

3. The Jury may know the witnesses to be stigmatized and infamous, which may be unknown to the parties, and consequently to the Court.

Fol. 148. To what end is the Jury to be returned out of the vicinage, where the cause of action ariseth? To what end must hundredors be of the Jury, whom the law supposeth to have nearer knowledge of the fact than those of the vicinage in general? To what end are they challenged so scrupulously to the array and poll? To what end must they have such a certain freehold, and be *probi et legales homines* \*, and not of affinity with the party concerned? To what end must they have, in many cases, the view, for exacter information chiefly? To what end must they undergo the punish-

\* Good and lawful men.



*punishment of the villainous judgment, if after all this they implicitly must give a verdict by the dictates and authority of another man, under pains of fines and imprisonment, when sworn to do it according to the best of their own knowledge?*

*A man cannot see by another's eye, nor hear by another's ear; no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning; and though the verdict be right the Jury give, yet they being not assured that it is so, from their own understanding, are forsworn, at least in foro conscientiae; in the court of conscience.*

*Fol. 149. And it is absurd to fine a Jury for finding against their evidence, when the Judge knows but part of it; for the better and greater part of the evidence may be well unknown to him, and this may happen in most cases, and often doth. Thus far Judge Vaughan\*.*

*It is true, in Wharton's case, they were fined for giving a verdict against the direction of the Court; but the Judges were of opinion, that there had been some very undue practices to procure that verdict. Yelv. 23.*

*They were also fined and committed in Wagstaffe's case, and upon an Habeas Corpus brought, they were*

*\* "No Judge has a right to blame a Jury, for exercising their power in such a case. It is the duty of the Judge to enlighten the understanding of the Jury, but he ought not to lead the Jury by the nose."*

*Blackst.*

*"Although a Judge is not punishable for a mere error in judgment, yet if a Judge will so far forget the dignity and honour of his post, as to turn solicitor in a cause which he is to judge, and privately and extrajudicially tamper with witnesses, or labour Jurors, he may be dealt with according to the same capacity, to which he so basely degrades himself." 12 Rep. Vaugh. 138, 8, P. C. 173.*

*"General rules are wisely established for attaining justice, with ease, certainty and dispatch: But the great end of them being to do justice, the Court are to see that it be really attained. It is the part of a good Judge to enlarge justice, not to enlarge his power."*

*1 Bur. 301, 304.*

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not bailed ; but this must necessarily be for some misdemeanour, though it is not mentioned in the case, and not for refusing to find a verdict according to the evidence, because they were not fined equally, which they would have been, if their supposed fault had been equal. *Hardres.* 409.

In cases of life and member, if they cannot agree on their verdict at the assizes, they must be carried on the circuit till they do agree. *1 Vent.* 97.

If after they are gone from the bar, one of them calls a witness who was sworn before, and had given his evidence in the cause, and then desires him to repeat it again, which he did, this is a misdemeanour, and the verdict shall be set aside. *Cro. Eliz.* 189.

And though they cannot be punished upon a pretence of finding a verdict contrary to evidence, yet for these and many more misdemeanours they may be fined. I shall instance in some more, viz. if an obstinate Jurymen will keep his fellows together, by disagreeing with them, without giving any reason, or if he withdraw from them, he may be fined and committed, because he is sworn well and truly to try the issue, and therefore to be resolute without a cause, or depart from the rest, is a misdemeanour.

In Baynes his case, the Jury had agreed on two verdicts, intending to cancel one, if the Court should be satisfied of the other. *Cro. Eliz.* 778.

So if they cast lots, whether to find for the one or the other, this is a great misdemeanour. *2 Lev.* 140, 205.

If they eat or drink before they bring in their verdict, they are to be fined ; and so they are if they eat and drink before or after they are agreed. But though they are to be fined, the verdict shall stand good if they eat, &c. at their own charge ; but if at the charge of the



the party for whom they find, then it shall be set aside.

1 *Leon.* 133. *Dyer* 137.

And some of them have been fined for having figs and pippins in their pockets, when they were withdrawn to consider of their verdict, though they did not eat them. 1 *Leon.* 133. *Moor* 599.

Though the law entrusts the Sheriff to return the Jury, yet the parties have the liberty to challenge them, that is, to except against any who are returned, which they may do against the whole pannel, and then 'tis called a challenge to the array, or against some particular persons, and then 'tis called a challenge to the polls.

A principal challenge to the array is, where the Sheriff is of kin to the party; but in such case he must shew how and in what degree of kindred; so if the Jury is returned at the desire of the party, or if either of them have an action depending against the Sheriff.

So if a Peer be returned of the Jury in the case of a common person; So where a Peer is defendant, and a Knight is not returned of the Jury; but if the plaintiff in such case will not accept, the defendant cannot.

Any particular Juror may be challenged who hath not 10 l. per annum. Formerly the sufficiency of a Juror, as to estate, was left to the discretion of the Judge: The first statute, as to this matter, was anno. 2 Henry 5, cap. 3, by which it was enacted, that he should have 40 shillings per annum, which by the statute was increased to 10 l. per annum, either of freehold or copyhold; and so it still continues.

Is is a good challenge, if there is any malice or favour between the parties and Jurors; and as to the last, it shall be presumed there is favour, if the Juror is of kin to either party, though never so remote; or if there is any affinity by marriage; and it hath been adjudged a good challenge, that a Juror is godfather to



the defendant. If a Juror hath given a verdict already in the same cause, this is a principal challenge to him ; but then the party must produce the record.

Though in the case of the regicides it was resolved, that if an indictment is found against several of them by the Grand Jury, and some of them are found guilty by the Petty Jury, and two or more of that Jury are returned to try the rest, it is no challenge to say, that they have already given their verdict against others who were indicted for the same offence ; because in law it is a several indictment against every one, and the Jury are to give their verdict upon particular evidence against such criminals ; and it is no consequence, that because they found one guilty, therefore they must find the rest so too.

This is very true, but it is not so fair a trial ; for though it doth not necessarily follow, that the finding one guilty must induce them to find the other guilty likewise ; yet it is a very strong presumption that they will do it.

There was formerly a question about a right to a way, and before the trial one affirmed, that there was such a way, and it would be very inconvenient if it should not be allowed as a way ; and this person being returned of the Jury, he was challenged, and it was allowed to be a good cause.

So where a man indicted for a battery done at Canterbury, and one of the Grand Jury, who had found the battery, was returned of the Petty Jury to try the cause, he was challenged, and held good. *Sid.* 244. It was likewise held a good challenge, because the prosecutor had been entertained at the house of the Jurymen. *1 Vent.* 309.

There are many more challenges to the favour, which are not proper to mention here ; but all of them  
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are left to the discretion of two men of the Jury, who are called *two tryers*, because they are sworn by the Court to *try* whether there is any cause of favour or not.

But there can be no challenge, either to the array or polls, till there is a full Jury, which may be as well by a *tales*, as if all the principal pannel appear; but it is too late after they are sworn.

But though trials by Juries is one of the fundamental parts of our constitution, yet there were formerly very great inconveniences in returning them; for the Sheriff, who is the proper officer in such cases, would sometimes summon as many as he pleased, and by this means the people were oppressed.

Therefore by the statute, Westminster 2, cap. 38, Sheriffs were ordered to summon in one assize 24, and no more.

But it hath been adjudged, that this old statute extends only to Jurors returned in civil actions, and not for the trial of criminal causes; for in such case the Sheriff might be commanded by the Court to return more, and it is usual to return 60, because of the peremptory challenges.

But in civil causes, if there are not enough of the principal pannel, the Sheriff may return a *tales* out of some other pannel of the Jurors then attending; and if such *talesmen* withdraw, and will not serve, the Judge may fine them.

Every summons of persons, who are qualified to serve on Juries, shall be made by the Sheriff, or his proper officer, and that at least six days before the trial, shewing to the person the warrant, under the seal of the office; and if such Juror is not at his usual place of habitation, then the Sheriff, or officer, may leave a note in writing under his hand to that effect, at his dwelling-



dwelling-house, with some person inhabiting there. The return made to the Justices shall be a good excuse to the Sheriff, though he summon one who is not qualified, and on action brought against him, the general issue may be pleaded, and he may give this act in evidence; and if the plaintiff be nonsuited, or discontinue, or a verdict against him, then he shall pay treble costs; and if the Sheriff, or his deputy, or bailiff, summon any freeholder, or copyholder, otherwise than as aforesaid, or neglect his duty, or excuse any person for favour or reward, or allow any exemption to one under 70 years old, to forfeit 20 l. to the party grieved, or to him who will sue for the same.

There must be but one pannel of 48 freeholders and copyholders, and no more, returned on the Grand Jury, each having lands 80 l. per annum. See the statute 7 and 8 William, cap. 32.

All Petty Jurors shall have in their own name, or in trust for them, in the same county where trials are to be had upon issues joined, 10 l. per annum, at least, above reprises; and this must be either freehold or copyhold, or in rents in fee-simple, or fee-tail, or for their own or some other person's life; and in Wales 6 l. per annum; and if returned of a lesser estate, it shall be a good cause of challenge, and the party returned shall be discharged upon such challenge, or upon his own oath; nor shall the issues of any Jurymen making default be saved, but by the special order of the Court, for some reasonable cause proved upon oath.

Sheriffs, Coroners, and other Ministers, who shall return any person to have been summoned by them, unless they have been summoned at least six days before the day on which they are to appear, or taking any reward to excuse the appearance of a Juror, forfeits for every offence 10 l. to the crown.

And



And likewise if they return any person not having 10 l. per annum, or 6 l. per annum in Wales, shall forfeit 5 l. to the crown.

This is all ordered by the statute 4 and 5 William and Mary, which was made at first but for 3 years, and continued by the statute 7 and 8 William, for 7 years, is further continued by the statute 10 Anna, cap. 14, for 11 years, &c.

An attorney was turned over the bar, for giving directions to the Sheriff what persons he would have returned.

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### S E C T. I.

*Of Justices of Peace, their Original, their Office, and Power, &c.*

**T**HE word *justice* bears in itself so plain and easy a definition, that it is not necessary to enter into any harangue about it; but the person who is to administer this justice had formerly many appellations, though his office was still the same; for at common law he was called a *conservator* of the peace; and by the statute 1 Edward 3, cap. 16, he is called a guardian of the peace.

There are different opinions amongst learned men concerning the time when Justices of Peace were first made; my Lord Coke tells us it was in the 6th year of Edward 1; but the learned antiquary, Sir Henry Spelman, was of another opinion, viz. that they were constituted by Edward 3, about the beginning of his reign, in order to suppress those tumults that might happen upon the deposing of Edward 2, at which time they had no judicial authority; for their power was only to examine and commit for a breach of the peace, as they saw cause.

But in the 34th year of that King, the Commons gave him advice how the public peace might be better kept



kept than at any time before, and that was by issuing out commissions under the great seal to six persons in every county, whereof two should be of the best quality, two Knights, and two men of the law, and that they should have power to hear and determine trespasses; and that they should sit four times in every year.

Thus began that Court which is now called the Quarter-Sessions: And because these persons had power by their commission to hear and determine causes, they were from thence called *Justices of the Peace*; and about two years afterwards they were distinguished by that name, by the statute 36 Edward 3, and from that time they were Judges of Record.

But it was not many years before this number of six greatly increased, insomuch that in the 12th year of Richard 2, the Parliament thought it necessary to reduce them to the first institution, that is, that there should be no more than six in each county.

But still they would be increasing, for about two years afterwards there were eight in every county.

This law is still in force, and not abrogated; but the number of Justices still increased, which made Mr. Lambard, above 100 years since, complain in a book which he wrote concerning the office of a Justice of Peace; and his countryman, Sir Henry Spelman, takes notice after him, that in his time there were above threescore in most counties.

It is true, in Wales there were but eight in each county; they were restrained to that number by a particular clause in the statute 35 Henry 8, intituled, *An act for certain ordinances in the dominion and principality of Wales*; by which it is enacted, that there shall be no more in any of the shires, over and above the President, Council, Justices, and the King's Attorney and Solicitor, and that they shall be put in every commission of the peace in every



every of the twelve shires. But this clause is repealed by the statute 5 William, cap. 4, and it is made lawful for the King, by commission under the great seal, to appoint what number he thinks fit.

The Court of Quarter-Sessions being established as aforesaid, my Lord Coke commended it to be such a form of subordinate jurisdiction for the quiet of the realm, that if duly executed the christian world had not the like.

I shall not endeavour to disprove him, though it is plain, that in all governments there are subordinate Ministers and Courts of that nature; but with us these Magistrates have been so unsuitably appointed, that a country Justice is made a jest in comedies, and his character the subject of buffoonry and laughter. It is probable that upon the consideration of these statutes, made in the reign of Edward 3, and the great number of Justices of Peace in every county, and some of them, if not many, very unequal for the office, a late ingenious author was for reducing them pretty near the original, both in quality and all other respects; and that was by constituting eight honorary Justices in every county, who should be men of the first quality there, and not be obliged to attend the sessions at any time, unless their zeal to do justice should incline them to be present; and that there should be eight acting Justices, who in every respect should be fit and qualified for the office, and who should constantly attend it, and be intitled to a reward for their pains.

In former days the guardians of the peace (who were almost the same with our Justices) had certain fees allowed for executing their office; and for that purpose petitions have been exhibited to Parliaments, as particularly to that held at York, anno. 8 Edward 3, which petition was again renewed in the thirty-sixth year of  
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that King's reign, when they were called Justices of the Peace; and then the King answered that he would provide therefore: But it doth not appear what the fees were, or what was farther done in it; but in Hillary term, 12 Richard 2, it was enacted, that they should have 4s. every day they sat in Quarter-Sessions, which in some places is still paid by the Sheriff to the Chairman; and since this statute there are others made, by which they are to have part of the forfeitures upon convictions; and by the statute of labourers they are to have 5s. for every day they sit in execution of that act above three days.

And there was so much care taken in those days to reward these Magistrates, that by a statute anno. 14 Richard 2, it is appointed that the names of the Justices, and the days of their sitting, should be written in indentures at every sessions; one part whereof was to remain with the Sheriff, that he might know to what Justices the wages should be paid, and the other part was to remain in the exchequer, that he might have allowance made in passing his accompts; and if he neglected or refused to pay the wages, an action of debt might be brought against him for the same.

His qualifications, both in respect to estate and otherwise, are as follow.

He must have 20l. per annum, except he is a man of the law: One was indicted for acting, not being qualified with such an estate, and the indictment concluded *contra pacem*; but it was quashed, because the time when he acted was not particularly set forth, for he might have 20l. per annum when he acted, though not afterwards. *Roll. Rep. 2 part. 247.*

He must be a man of reputation: The old word was, he must be a *prevalent* man in the county (i. e.) a man of some authority and power, and must not be a steward



steward to any Lord. A Justice of Peace being, as it hath been observed, a creature of the statute law; the authority he hath is given likewise by particular statutes.

As for instance: By the statute before mentioned, they had power to hear and determine trespasses and felonies, and by consequence murder; for that is included under the general name of felony: And by the statute 43 Edward 3, cap. 1, and 2 Richard, cap. 10, they had power to proceed to deliver thieves and felons.

It is true, their power was very much enlarged by these statutes, beyond the power of the conservators of the peace at common law; for they could not do so much as to commit for a breach of the peace: But yet since the 1 and 2 Ph. and Ma. cap. 13, directs them *to certify the examinations which they take in homicide and felony to the Justices of goal-delivery*, the Court of Quarter-Sessions do seldom or never proceed in such cases, but only in petty larcenies; but do certify their proceedings to the assizes, and bind over the prosecutors thither.

His single testimony upon the view of a riot, or the defect or repairs of an highway, is of greater authority than an indictment found by a Jury; and in all cases where he hath a jurisdiction, he is to be obeyed by the subordinate officers, and his warrant is not to be disputed by them; for they may be indicted if they either neglect or refuse to execute it.

If he is abused in any thing relating to the execution of his office, the offender shall be punished by indictment and fine; as for instance, an order was affirmed at the sessions upon an appeal, and the person against whom it was made said in anger, that *if he could not have justice there, he would have it elsewhere*; and for this contempt he was indicted, fined, and committed for non-payment of the fine: And this proceeding was



held lawful, and it was a very strained construction of this sentence by one of the Judges to say, that the words did not import any contempt, but that they were spoken by way of appeal, since they are a plain accusation of the Court that he had not justice done there.

He shall not be punished for any thing done by him in sessions as a Judge, because he is a Judge of Record, and not answerable for any defect in his understanding.

But if any action should be brought against him for such matters, and he should justify the fact done by him as a Justice of Peace, he need not set forth his commission; for that remains with the *custos rotulorum*, and he himself is a Judge of Record, as hath been mentioned.

The law favours him in all things which he doth in execution of his office, but in no irregularities; therefore where he compounded a recognizance, and did not return it to the sessions as he ought, and where he took 20 s. for every unlicensed alehouse, and converted the money to his own use, he was fined one thousand marks, and committed during the King's pleasure, and was ordered to find sureties for his good behaviour for a year, and to acknowledge his offence at the next assizes.

“ The power of a Justice of the Peace is in restraint of the common law, and in abundance of instances is a tacit repeal of that famous clause in the great charter, that a man shall be tried by his equals; which also was the common law of the land long before the great charter, even for time immemorial, beyond the date of histories and records.

“ Therefore generally nothing shall be presumed in favour of the office of a Justice of the Peace; but the intendment will be against it.

“ There-



“ Therefore where a special power is given to a Justice of the Peace by a statute, to convict an offender in a summary manner, without a trial by Jury, it must appear that he hath strictly pursued that power; otherwise the common law will break in upon him, and level all his proceedings. Therefore where a trial by Jury is dispensed withal, yet he must proceed nevertheless according to the course of the common law in trials by Juries, and consider himself only as constituted in the place both of Judge and Jury. Therefore there must be an information or charge against a person; then he must be summoned, or have notice of such charge, and have an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the statute specially directeth otherwise; then if the person is found guilty, there must be a conviction, judgment and execution, all according to the course of the common law, directed and influenced by the special authority given by statute; and in the conclusion there must be a record of the whole proceedings, wherein the Justice may set forth the particular manner and circumstances, so that if he shall be called upon to account for the same by a superior court, it may appear that he hath conformed to the law, and not exceeded the bounds prescribed to its jurisdiction.” *Burn's Parish Officer.*

“ As to the powers given to one, two or more Justices, by the several statutes, which from time to time have heaped upon them such a variety of business, that few care to undertake, and fewer understand the office, they are such, and of so great importance to the public, that the country is greatly obliged to any worthy Magistrate, who, without any sinister views of his own, will engage in this troublesome office.” *Blackst.*

For



For the help and improvement of Justices of the Peace, and the instruction of others, it was thought convenient, under this head, to add a number of most excellent and useful forms of warrants, examinations, recognizances, mittimus, &c. from the works of the celebrated Dr. Richard Burn, which forms are so highly esteemed in England, that they have lately been selected, printed and sold there in separate sheets.

*Warrant to apprehend Affrayers.*

*Westmorland.*      { *To the Constable of ———.*

**W**HEREAS *A. I.* of ———, yeoman, hath this day made oath before me *J. P.* Esq; one of his Majesty's Justices of the Peace for the said county, that on the ——— day of ———, in the ——— year of the reign of ———, *A. O.* of ———, yeoman, and *B. O.* of ———, yeoman, at ———, in the said county, in a tumultuous manner, made an affray, wherein the person of the said *A. I.* was beaten and abused by them the said *A. O.* and *B. O.* without any lawful or sufficient provocation given to them, or to either of them, by him the said *A. I.* These are therefore to command you forthwith to apprehend the said *A. O.* and *B. O.* and bring them before me, or some of his said Majesty's Justices of the Peace for the said county, to answer the premises, and to find sureties as well for their personal appearance at the next general Quarter-Sessions of the peace to be holden for the said county, then and there to answer to an indictment to be preferred against him by the said *A. I.* for the said offence, as also for their keeping the peace in the mean time, towards his said Majesty and all his liege people, and especially towards him the said *A. I.* Hereof fail not, as you will answer the contrary at your peril. Given under



under my hand and seal at ———, in the said county,  
the ——— day of ———, &c.

*Indictment for an Affray.*

**T**H E Jurors for our Lord the King, upon their oath present, that *A. O.* of ———, in the county of ———, taylor, and *B. O.* of ———, in the said county, blacksmith, with force of arms, on the ——— day of ———, in the ——— year of the reign of our Sovereign Lord George the third, by the grace of God, of Great-Britain, France and Ireland, King, defender of the faith, and so forth, at ——— aforesaid, in the county aforesaid, being arrayed and unlawfully assembled together in a warlike manner, did make an affray, to the terror and disturbance of divers of the subjects of our said Sovereign Lord the King then and there being, and to the evil example of all other the subjects of our said Sovereign Lord the King, and against the peace of our said Lord the King, his crown and dignity.

*Warrant to levy the Penalty for suffering Tipling; or*  
I J. c. 9.

*Westmorland.* { *To the Constable of ———, and to the*  
*Churchwardens of the Parish of ———.*

**W**H E R E A S it hath been duly proved before me ———, this present day, that *A. O.* of ———, in the parish of ———, in the said county, alehousekeeper, did, upon the ——— day of ———, permit and suffer *A. D.* of ———, shoemaker, and *B. D.* of ———, labourer, to remain and continue drinking and tipling in the alehouse of the said *A. O.* in the parish aforesaid, they having no urgent occasion, nor other lawful reason so to do; these are therefore to require you the said constables and churchwardens, or some or one of you, to levy, by distress of the goods and chattels of the said *A. O.* the  
sum



sum of 10 s. for the said offence, for the use of the poor of the said parish, and to detain the said goods for the space of six days next after such distress taken, if the said forfeiture of 10 s. shall not be satisfied and paid to you within that time; and that after the said six days, if the same shall not be so paid as aforesaid, together with the reasonable charges of taking and keeping the said distress, that you do appraise and sell the same to satisfy the said forfeiture, rendering the surplussage to the owner upon demand, reasonable charges of taking, keeping and selling the said distress being first deducted. And if there shall not be sufficient distress, whereby to levy the said sum of 10 s. that you do certify the same to me, together with return of this warrant. Given under my hand and seal, the ——— day of ———.

*Commitment to the Stocks for Tipling, on Inability to pay the Penalty; on 4 J. c. 5.*

*Westmorland.*      { *To the Constable of ———.*

**W**H F R E A S it hath been duly proved before me ———, that *A. B.* of ———, yeoman, did on the ——— day of ——— remain and continue tipling and drinking in a common alehouse, known by the sign of ———, in ———, in the parish of ———, in the county aforesaid, contrary to the statutes in such case made and provided, by reason whereof he hath forfeited the sum of 3 s. 4 d. to the use of the poor of the said parish; and whereas it duly appears to me that the said *A. B.* is not able to pay the said forfeiture; these are therefore to require you to set the said *A. B.* in the stocks, there to remain by the space of four hours. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, this ——— day of ———.

*Warrant*



*Warrant to levy the Penalty of Drunkenness, on Non-payment; by 4 J. c. 5, 21 J. c. 7.*

*Westmorland.* { *To the Constable of ———, in the said County.*

**W**HEREAS *A. O.* of ———, in the parish of ———, in the county aforesaid, labourer, was on the ——— day of ——— convicted before me ———, one of his Majesty's Justices of the Peace for the said county, for that he the said *A. O.* was on the ——— day of ——— drunk, at ——— aforesaid, in the parish and county aforesaid, by which he hath forfeited the sum of 5 s. And whereas I the said ——— did issue my warrant on the ——— day of ———, to the Churchwardens of the parish of ——— aforesaid, to demand and receive the said sum of 5 s. of and from the said *A. O.* And whereas it duly appears to me, as well on the oath of *C. W.* Churchwarden of the parish of ——— aforesaid, as otherwise, that they the said Churchwardens did on the ——— day of ——— duly demand the said sum of 5 s. of and from the said *A. O.* but that he the said *A. O.* hath neglected to pay the same as aforesaid, and that it is not as yet paid: These are therefore to command you forthwith to levy the said sum, by distraining the goods and chattels of him the said *A. O.* And if within the space of [*six*] days next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of 5 s. to the Churchwardens of the said parish, for the use of the poor of the said parish, rendering to him the said *A. O.* the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress, being first deducted. And if the said *A. O.* be not able to pay



the said sum of 5 s. and sufficient distress cannot be found whereof to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal this ——— day of ———.

*Commitment to the Stocks for Drunkenness, on Inability to pay the Penalty; on 4 J. c. 5, 21 J. c. 7.*

*Westmorland.* { *To the Constable of ———, in the said County.*

**W**HEREAS *A. O.* of ———, in the said county, labourer, was on the ——— day of ——— convicted before me ———, one of his Majesty's Justices of the Peace for the said county, for that he the said *A. O.* was on the ——— day of ——— drunk, at ——— aforesaid, in the parish of ———, in the said county, whereby he hath forfeited the sum of 5 s. And whereas it duly appears to me, that the said *A. O.* is not able to pay the said sum of 5 s. These are therefore to require you, in his Majesty's name, to set him the said *A. O.* in the stocks, there to remain for the space of six hours. Given under my hand and seal the ——— day of ———.

*Indenture of a Parish Apprentice; on 43 El. c. 2, f. 1, 5.*

**T**HIS indenture, made the ——— day of ———, in the year of our Lord ———, between *A. B.* and *C. D.* Churchwardens, and *E. F.* and *G. H.* Overseers of the Poor of the parish of ———, in the county of ———, of the one part, and *A. M.* of ———, in the said parish, shoemaker, of the other part, witnesseth that the said Churchwardens and Overseers of the Poor, by and with the consent of ———, two of his Majesty's Justices of the Peace for the said county, dwelling near to [*or, in*] the said parish of ———, one whereof is of the quorum, have by these presents put, placed, and bound *A. P.* a poor boy,



boy, whose parents, *B. P.* and *C. P.* are not able to maintain him, of the age of — years, to be an apprentice with him the said *A. M.* and as an apprentice with him the said *A. M.* to dwell, from the date of these presents, until the said *A. P.* shall come to the age of twenty-four years, [*or, if a female, until the said A. P. shall come to the age of twenty-one years, or the time of her marriage, which shall first happen,*] according to the statutes in such case made and provided. By and during all which time and term, the said *A. P.* shall the said *A. M.* his said master well and faithfully serve, in all such lawful business as the said *A. P.* shall be put unto by the command of his said master, according to the power, wit, and ability of him the said *A. P.* and honestly and obediently in all things shall behave himself towards his said master, and honestly and orderly towards the rest of the family of the said *A. M.* And the said *A. M.* for his part, for himself, his executors and administrators, doth hereby promise and covenant, to and with the said Churchwardens and Overseers of the Poor, for them and their successors, and for the said *A. P.* that he the said *A. M.* shall the said *A. P.* in the craft, mystery, and occupation of a shoemaker, which he the said *A. M.* now useth, after the best manner that he can or may, teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in any wise appertaineth; and that the said *A. M.* shall also find and allow unto the said apprentice sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice, during the term aforesaid. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

*Where the Overseers and master can agree, other covenants may be inserted, according to such agreement; but*



*if the master is to be compelled, it seemeth not safe to require more from him by the indenture than is above expressed.*

*The Assent of two Justices.*

**W**E —, two of his Majesty's Justices of the Peace for the above mentioned county of —, dwelling near to the above mentioned parish of —, and one of us of the quorum, do hereby declare our assent to the binding the above *A. P.* an apprentice to the above named *A. M.* according to the form and effect of the above written indenture. Given under our hands the — day of, &c.

*Warrant against the Master for misusing his Apprentice;*  
*on 5 El. c. 4.*

*Westmorland.* { *To the Constable of —.*

**W**H E R E A S complaint hath been duly made unto me —, one of his Majesty's Justices of the Peace in and for the said county, by *A. P.* apprentice to *A. M.* of —, in the said county, shoemaker, that the said *A. M.* hath misused and evil intreated him the said *A. P.* by cruel punishment, and beating him the said *A. P.* without just cause, and by not allowing unto him sufficient meat, drink, apparel, [*or as the case shall be:*] These are therefore in his Majesty's name to command you to cause the said *A. M.* personally to appear before me, at the house of —, in the said county, on — the — day of —, at the hour of — in the afternoon of the same day, to answer unto the said complaint; and also to cause the said apprentice to appear before me at the same time and place, to make good his complaint. Herein fail you not. Given under my hand and seal the — day of, &c.

*Warrant*



*Warrant against the Apprentice, on Complaint of the Master; on the 5 El. c. 4.*

*Westmorland.* } *To the Constable of ———.*

**W**HEREAS complaint hath been duly made unto me ———, one of his Majesty's Justices of the Peace in and for the said county, by *A. M.* of ———, in the said county, husbandman, that *A. P.* now being an apprentice to him the said *A. M.* is negligent, stubborn, disorderly, and doth not his duty to him the said *A. M.* his master; these are therefore to command you to bring the said apprentice before me, and to give notice to the said master that he appear before me at the same time, that such order may be taken in the premises, as equity shall require. Herein fail not. Given under my hand and seal the ——— day of, &c.

*Order of Discharge by four Justices at the Sessions; on the 5 El. c. 4, s. 35.*

*Westmorland.* **A**T a General Quarter Sessions of the peace holden at ———, in and for the county aforesaid, the ——— day of ———, in the ——— year of the reign of our Lord George the Third, by the grace of God of Great-Britain, France, and Ireland, King, defender of the faith, and so forth; before ———, Justices of our said Lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours, in the said county committed, and of the quorum, it is ordered as followeth:

Upon the petition of *A. P.* apprentice to *A. M.* of ———, in the said county, husbandman, to be relieved upon certain neglects of the said master in instructing him in his trade, and in misusing and evil intreating the said apprentice by cruel punishment, [*or as the case shall be:*]



*be:]* And the said master having likewise appeared upon his recognizance taken before *J. P.* Esq; one of the said Justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint; but on the contrary, the said *A. P.* having given full proof of the truth of the said complaint to the satisfaction of the said Court: We therefore, whose hands and seals are hereunto set, being four of the said Justices, and of the quorum, do hereby order, pronounce and declare, that the said apprentice shall be, and is hereby discharged and freed from his said apprenticeship: And this to be a final order betwixt the said master and apprentice, any thing contained in their indentures of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals the day and year first above written.

*Complaint of an Apprentice to two Justices against his Master; on 20 G. 2, c. 19.*

*Westmorland.* **T**HE information and complaint of *A. P.* apprentice to *A. M.* of —, in the said county, husbandman, taken and made [*on oath, if he is above 14 years of age,*] before us, two of his Majesty's Justices of the Peace in and for the said county, the — day of —, in the year, &c.

Who saith that he the said *A. P.* about a year and a half ago last past, became bound an apprentice by indenture to *A. M.* of — aforesaid, husbandman; that at several times since he entered upon the said apprenticeship, the said *A. M.* hath misused and ill treated him the said apprentice, and particularly, [*as the case shall be.*]

*A. P.*

*Before us,*

*J. P.*

*K. P.*

*Summons*



*Summons of the Master by two Justices, on Complaint of the Apprentice; on the 20 G. 2, c. 19, s. 3.*

*Westmorland.* } *To the Constable of —.*

**W**HEREAS information and complaint hath been made unto us —, two of his Majesty's Justices of the Peace in and for the said county, by *A. P.* apprentice to *A. M.* of —, in the said county, husbandman, that he the said *A. M.* hath misused and ill treated him the said *A. P.* and particularly, [*as the case shall be:*] These are therefore to require you to summon the said *A. M.* to appear before us at —, in the said county, on — the — day of —, to answer unto the said information and complaint. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under our hands and seals the — day of —, in the year —.

*Discharge of an Apprentice by two Justices, on the Master misusing him; by the 20 G. 2, c. 19, s. 3.*

*Westmorland.*

**W**HEREAS complaint hath been made before us —, two of his Majesty's Justices of the Peace in and for the said county, by *A. P.* apprentice to *A. M.* of —, in the said county, taylor, that he the said *A. M.* hath misused and ill treated him the said apprentice, and particularly, [*as the case shall be:*] And whereas the said *A. M.* hath appeared before us, in pursuance of our summons to that purpose, but hath not cleared himself of and from the said accusation and complaint; but on the contrary the said *A. P.* hath made full proof of the truth thereof before us upon oath; we therefore by these presents do discharge him the said *A. P.* of and from his apprenticeship to the said *A. M.* any thing in the indenture of apprenticeship made between them, or otherwise howsoever,



ever, to the contrary notwithstanding. Given under our hands and seals the —— day of, &c.

[Or, And whereas it hath been duly proved before us, as well upon the oath of *A. C.* Constable of ——, aforesaid, as otherwise, that he the said *A. C.* did duly summon the said *A. M.* to appear before us at a reasonable time in the said summons mentioned and specified; but notwithstanding the same, he the said *A. M.* hath not appeared before us according to such summons: We therefore having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us upon oath, do discharge, &c.]

*Complaint to two Justices of the Master against his Apprentice; on the 20 G. 2, c. 19, s. 4*

*Westmorland.* **T**H E complaint and information of *A. M.* of ——, in the said county, husbandman, taken and made on oath before us ——, two of his Majesty's Justices of the Peace in and for the said county, the —— day of ——, who saith that *A. P.* apprentice by indenture to him the said *A. M.* hath in the service of his apprenticeship been guilty of several misdemeanours, miscarriages, and ill behaviour, towards him the said *A. M.* and particularly, [*as the case shall be.*]  
*A. M.*

Before us,                      *J. P.*  
                                         *K. P.*

*Warrant for a disorderly Apprentice, by two Justices; on the aforesaid Complaint, by the 20 G. 2, c. 19, s. 4.*

*Westmorland.*    { *To the Constable of ——.*

**W**H E R E A S oath hath been made before us ——, two of his Majesty's Justices of the Peace, in and for the said county, by *A. M.* of ——, in the  
said



said county, husbandman, that *A. P.* apprentice to the said *A. M.* hath committed divers misdemeanours against the said *A. M.* his master, and particularly, [*as the case shall be :*] These are therefore to require you forthwith to apprehend the said *A. P.* and bring him before us, to answer unto the said complaint; and to be dealt with according to law : And you are to give notice to the said *A. M.* that he appear before us at the same time, to make good the said complaint. Given under our hands and seals, &c.

*Commitment of an Apprentice to the House of Correction,  
on Complaint of his Master, by two Justices; on the  
20 G. 2, c. 19, s. 4.*

*Westmorland.* { *To the Constable of —, in the said  
County, and to the Keeper of the House  
of Correction, at —, in the said  
County.*

**W**HEREAS complaint hath been made before us —, two of his Majesty's Justices of the Peace in and for the said county, upon the oath of *A. M.* of —, in the said county, husbandman, that *A. P.* apprentice of the said *A. M.* hath committed divers misdemeanours against him the said *A. M.* his master, and particularly, [*as the case shall be ;*] And whereas upon examination thereof, and upon hearing the allegations of both parties, having come before us for that purpose; and upon due consideration had thereof, he the said *A. P.* is and stands convicted before us of the said offence : We do therefore hereby command you the said Constable to take and convey the said *A. P.* to the said house of correction; and to deliver him to the said Keeper thereof, together with this warrant : And we do hereby command you the said Keeper of the said house of correction to receive the said *A. P.*

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into



into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of ——. Given under our hands and seals the —— day, &c.

*Discharge of an Apprentice by two Justices, on Complaint of the Master; by 20 G. 2, c. 19, s. 4.*

*Westmorland.* **W**HEREAS complaint, &c. (as in the last precedent)—We do therefore by these presents discharge the said *A. P.* from his apprenticeship to the said *A. M.* any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise, to the contrary notwithstanding. Given, &c.

*Warrant for an Assault.*

*Westmorland. To the Constable of ———.*

**W**HEREAS complaint hath been made before me *J. P. Esq.* one of his Majesty's Justices of the Peace in and for the said county, upon the oath of *A. I.* of ———, in the said county, taylor, that *A. O.* of ——— afore said, butcher, did on the —— day of —— violently assault and beat him the said *A. I.* at —— afore said, in the county afore said: These are therefore, in his Majesty's name, to command you forthwith to apprehend the said *A. O.* and to bring him before me, to answer unto the said complaint, and to be further dealt withal according to law. Given under my hand and seal the —— day of, &c.

*Indictment for an Assault.*

**T**HE jurors for our Lord the King upon their oath present, that *A. O.* of ———, in the said county, butcher, on the —— day of ——, in the —— year



year of the reign of ———, at ——— aforesaid, in the county aforesaid, in and upon *A. I.* taylor, then and there being in the peace of God, and of our said Lord the King, with force and arms, an assault did make, and him the said *A. I.* then and there did beat, wound, and evil intreat, and then and there to him other enormous things did, to the great damage and hurt of him the said *A. I.* and to the evil example of all others offending in the like kind, and against the peace of our said Lord the King, his crown and dignity.

*Warrant of the two next Justices, for the Mother of a bastard Child, with a Summons for the reputed Father, to make the Order of Filiation and Maintenance; on the 18 El. c. 3.*

*Westmorland.* { *To the Constable of ———.*

**W**HEREAS information hath been made unto us ———, two of his Majesty's Justices of the Peace in and for the said county, one whereof is of the quorum, and both of us residing next unto the limits of the parish church within the parish of ———, in the said county, as well upon the complaint of the Churchwardens and Overseers of the Poor of the said parish, as on the oath of *A. M.* of ———, single women, that on the ——— day of ——— last past, she the said *A. M.* was delivered of a (male) bastard child at ———, in the said parish, and that *A. F.* of ———, in the said county, taylor, is the father of the said bastard child, and that the said bastard child is now living, and chargeable, [*or, likely to become chargeable*] to the said parish of ———. These are therefore to command you to bring the said *A. M.* before us, at the house of ———, in ———, in the said county, on ———, the ——— day of ———, at the hour of ——— in the afternoon of ———.

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the



the same day, to be by us further examined, touching the premises; and that you give notice thereof unto the said *A. F.* that he may likewise be at the time and place aforesaid, to make his lawful defence: To the end that upon the examination of the cause and circumstance, we may take such order therein, as to right doth appertain. And what you shall do in the execution hereof, you are to make known unto us at the time and place aforesaid. Given under our hands and seals the ——— day of, &c.

*Voluntary Examination of a Woman with Child of a Bastard: By 6 G. 2, c. 31.*

*Westmorland.* **T**HE voluntary examination of *A. M.* of ———, in the said county, single woman, taken on oath, before me ———, one of his Majesty's Justices of the Peace in and for the said county, this ——— day of ———.

Who saith, that she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of ———, in the said county, and that *A. F.* of ———, in the said county, weaver, is the father of the said child.

The mark of  
Taken and signed the day and year ——— + *A. M.*  
above written, before me ———

——— *J. P.*

*Examination after the Birth.*

*Westmorland.* **T**HE examination of *A. M.* of ———, in the said county, single woman, taken upon oath before me ———, one of his Majesty's Justices of the Peace in and for the said county, this ——— day of ———.

Who saith, that on ——— the ——— day of ———, now last past, at ———, in the parish of ———, in the county aforesaid,



aforesaid, she the said *A. M.* was delivered of a (male) bastard child, and that the said bastard child is likely to become chargeable to the said parish of —; and that *A. F.* of —, in the said county, weaver, did get her with child of the said bastard child.

*Taken and signed the day and year  
above written, before me*

The mark of  
+ *A. M.*

*J. P.*

*Warrant for apprehending the reputed Father before the  
Birth; on 6 G. 2, c. 31.*

*Westmorland. { To the Constable of —.*

**W**HEREAS *A. M.* of —, in the said county, single women, hath by her voluntary examination, taken in writing upon oath, before me —, one of his Majesty's Justices of the Peace in and for the said county, this present day, declared herself to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of —, in the said county, and that *A. F.* of —, in the said county, weaver, is the father of the said child; and whereas *O. P.* one of the Overseers of the Poor of the parish of — aforesaid, in order to indemnify the said parish in the premises, hath applied to me to issue out my warrant for the apprehending of the said *A. F.* I do therefore hereby command you immediately to apprehend the said *A. F.* and to bring him before me, or some other of his Majesty's Justices of the Peace for the said county, to find security to indemnify the said parish of —, or else to find sufficient surety for his appearance at the next General Quarter Sessions, [or, next General Sessions] of the peace, to be holden for the said county, and to abide and perform such order or orders as shall be made, in pursuance of an act passed in the eighteenth year



year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony. Given my hand and seal the — day of, &c.

*The like after the Birth.*

*Westmorland.* { *To the Constable of —.*

**W**HEREAS *A. M.* of —, in the said county, single woman, hath by her examination taken in writing upon oath, before me —, one of his Majesty's Justices of the Peace in and for the said county, declared, that on the — day of —, now last past, at —, in the parish of —, in the county aforesaid, she the said *A. M.* was delivered of a (male) bastard child, and that the said bastard child is likely to become chargeable to the said parish of —, and hath charged *A. F.* of —, in the said county, weaver, with having gotten her with child of the said bastard child: And whereas *O. P.* one of the Overseers of the Poor, [*and so on, as in the foregoing precedent, to the end.*]

*Commitment thereupon; by the 6 G. 2, c. 31.*

*Westmorland* { *To the Constable of —, in the said County, and to the Keeper of the House of Correction, [or Common Goal] at —, in the said County.*

**W**HEREAS *A. M.* of —, single woman, in her voluntary examination, taken in writing and upon oath, the — day of —, now last past, before me —, one of his Majesty's Justices of the Peace in and for the said county, hath declared herself to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of —, and hath charged *A. F.* of —, gentleman, with having gotten her with child of the said



saïd bastard child ; [*or, if it is after the birth, then say,*  
Whereas *A. M.* of ———, single woman, in her examination taken in writing upon oath, before me ———, one of his Majesty's Justices of the Peace, in and for the saïd county, hath declared, that on the ——— day of ———, now last past, at ———, in the parish of ———, in the county aforesaid, she, the saïd *A. M.* was delivered of a (male) bastard child, and that the saïd bastard child is likely to become chargeable to the saïd parish of ———, and hath charged *A. F.* of ———, weaver, with having gotten her with child of the saïd bastard child ;] And whereas the saïd *A. F.* being now personally present before me, being brought by my warrant, upon application for that purpose to me made, by *O. P.* one of the Overseers of the Poor of the saïd parish, hath refused to give security to indemnify the saïd parish, and hath also refused to enter into a recognizance with sufficient surety, upon condition to appear at the next General Quarter Sessions (*or, next General Sessions*) of the peace, to be holden for the saïd county, and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony : These are therefore to command you the saïd Constable to take and convey the saïd *A. F.* to the house of correction at ———, in the saïd county, and to deliver him to the Keeper thereof, together with this warrant. And I do hereby command you the saïd Keeper of the saïd house of correction to receive the saïd *A. F.* into your custody in the saïd house of correction, and him there safely to keep, until he shall give such security, or enter into such recognizance as aforesaid, or be otherwise lawfully delivered from thence. Given under my hand and seal the ——— day of, &c.

Bond



*Bond to indemnify the Parish.*

**K** NOW all men by these presents, that we *A. F.* of ———, in the county of ———, gentleman, and *A. S.* of ———, yeoman, are held and firmly bound unto ———, Churchwardens, and ———, Overseers of the Poor of the parish of ———, in the said county (in trust for the parishioners of the said parish) in ——— pounds, of good and lawful money of Great-Britain, to be paid to the said ———, or their certain attorney, their executors, administrators, or assigns: To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each and every of our heirs, executors and administrators, firmly by these presents; sealed with our seals, and dated the ——— day of ———, in the ——— year of the reign of our Sovereign Lord George the third, of France, and Ireland, King, defender of the faith, and so forth, and in the year of our Lord ———.

The condition of this obligation is such, that whereas *A. M.* of ———, single woman, hath in and by her voluntary examination, taken in writing and upon oath before ———, one of his Majesty's Justices of the Peace in and for the said county of ———, declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of ———, and that the above bounden *A. F.* is the father of the said child, [*if it is after the birth, then say*] that whereas *A. M.* of ———, single woman, in her examination taken in writing upon oath before ———, one of his Majesty's Justices of the Peace in and for the said county, hath declared, that on the ——— day of ———, now last past, at ———, in the parish of ———, in the county aforesaid, she the said *A. M.* was delivered of a (male) bastard child, and that the said bastard child is likely to become chargeable to



to the said parish of ———, and hath charged the above bound *A. F.* with having gotten her with child of the said bastard child:] If therefore the said *A. F.* and *A. S.* or either of them, their or either of their heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, fully and clearly indemnify, and save harmless, as well the above named Churchwardens and Overseers of the Poor of the said parish of ———, and their successors for the time being, as also all and singular the other parishioners and inhabitants of the said parish of ———, which now are, or hereafter shall be for the time being, of and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles, and other charges and demands whatsoever, touching or concerning the same, that then this present obligation to be void, otherwise of force.

*Signed, sealed, and delivered (having been* *A. F.*

*first duly stamped) in the presence of* *A. S.*

*A. W.*

*B. W.*

*Condition of a Recognizance for the reputed Father to appear at the Sessions, and to abide such Order as shall be made; on 6 G. 2, c. 31.*

**W**HEREAS *A. M.* of ———, single woman, hath in and by her voluntary examination, taken in writing and upon oath, before ———, one of his Majesty's Justices of the Peace in and for the said county of ———, declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of ———, and that the above bounden *A. F.* is the father of the said child: [If it is after the birth, then say, Whereas *A. M.* of ———, *M m* *single*



single woman, in and by her examination taken in writing upon oath, before —, one of his Majesty's Justices of the Peace in and for the said county, hath declared that on the — day of —, now last past, at —, in the parish of —, in the county aforesaid, she the said *A. M.* was delivered of a (male) bastard child, and that the said bastard child is likely to become chargeable to the said parish of —, and hath charged the above bound *A. F.* with having gotten her with child of the said bastard child:] The condition of this recognizance is such, that if the above bound *A. F.* do and shall appear at the next General Quarter Sessions [*or*, the next General Sessions] of the peace to be holden for the said county, and shall abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, — Then this recognizance to be void, otherwise of force.

*Condition of a Recognizance to appear at the Sessions, after the Order not performed; on the 18 El. c. 3.*

**W**HEREAS by an order under the hands and seals of us —, two of his Majesty's Justices of the Peace for the said county, one whereof is of the quorum, and both of us residing [*in, or*] next unto the limits of the parish church within the parish of —, in the said county, *A. F.* of —, in the said county, taylor, is adjudged to be the reputed father of a bastard child born lately of the body of *A. M.* of —, single woman, at —, in the said parish of —. [*And then set forth what was ordered therein further.*] And whereas the said *A. F.* hath not observed nor performed the said order;

The



The condition therefore of this recognizance is such, that if the above bound *A. F.* shall observe and perform the said order, or shall personally appear at the next General Sessions of the peace, to be holden in and for the said county, and shall then and there abide such order as shall be then made by the Court, concerning the said bastard child, if any such order shall be then made; and if no such order shall be then made or taken by the said Court, if the said *A. F.* do and shall perform the order already by us made as aforesaid,—Then this recognizance to be void.

*Warrant to apprehend a Burglar.*

*Westmorland.* { *To the Constable of ———.*

**F**ORASMUCH as *A. I.* of ———, in the county of ———, yeoman, hath this day made information and complaint upon oath, before me *J. P.* Esquire, one of his Majesty's Justices of the Peace for the said county, that yesterday in the night the dwelling-house of him the said *A. I.* at ——— aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and one silver tankard of the value of 5 l. of the goods and chattels of him the said *A. I.* feloniously and burglariously stolen, taken, and carried away from thence, and that he hath just cause to suspect, and doth suspect, that *A. O.* late of ———, in the county of ———, labourer, the said felony and burglary did commit: These are therefore, in his said Majesty's name, to command you, that immediately upon sight hereof you do apprehend the said *A. O.* and bring him before me to answer the premises, and to be farther dealt withal according to law. Herein fail you not. Given under my hand and seal the ——— day of ———, in the year ———.



*Indictment for proper Burglary.**Westmorland.*

**T**H E Jurors for our Lord the King upon their oath present, that *A. O.* late of \_\_\_\_\_, in the county of \_\_\_\_\_, labourer, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_, at the hour of one in the night of the same day, with force and arms, at \_\_\_\_\_, in the county of \_\_\_\_\_, the dwelling-house of *A. I.* feloniously and burglariously did break and enter, with intent him the said *A. I.* of his goods in the same dwelling-house then being feloniously and burglariously to spoil and rob, and the same goods feloniously and burglariously to steal, take, and carry away ; against the peace of our said Lord the King, his crown and dignity.

*Indictment for Burglary and Larceny.**Westmorland.*

**T**H E Jurors for our Lord the King upon their oath present, that *A. O.* late of \_\_\_\_\_, in the county of \_\_\_\_\_, labourer, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_, betwixt the hours of ten and eleven in the night of the same day, with force and arms, at \_\_\_\_\_, in the county of \_\_\_\_\_, the dwelling-house of *A. I.* feloniously and burglariously did break and enter, and one silver tankard, of the value of 5 l. of the goods and chattels of him the said *A. I.* in the same dwelling-house, then and there feloniously and burglariously did steal, take, and carry away ; against the peace of our said Lord the King, his crown and dignity.

*Warrant*



Warrant of two Justices to apprehend an Offender ; on  
33 H. 8, c. 1.

Westmorland. { To the Constable of ———.

**W** H E R E A S complaint hath been made unto us  
whose names and seals are hereunto set, two of  
his Majesty's Justices of the Peace for the said county,  
and one of us of the quorum, upon the oaths of *A. I.* of  
——, yeoman, and *B. I.* of ——, yeoman, that on the  
—— day of ——, *A. O.* of ——, yeoman, did by a false  
privy taken [*or, counterfeit letter*] that is to say, by [*here  
particularize the offence*] falsely and deceitfully obtain and  
get into his hands and possession [*here mention the things*]  
from *C. I.* of ——, contrary to the statute in that case  
made : These are therefore to command you, upon  
sight hereof, forthwith to bring the said *A. O.* before us  
at ——, on the —— day of ——, to answer to the said  
complaint, and farther to be dealt withal according to  
law. Given under our hands and seals the —— day  
of ——.

*Mittimus for Felony.*

Westmorland. **S** I R John Pennington, Baronet, one of  
the Justices of our Lord the King, as-  
signed to keep the peace in the said county, and also to  
hear and determine divers felonies, trespasses, and other  
misdemeanours in the said county committed ; To the  
Keeper of the goal of our said Lord the King at ——,  
in the said county, or to his Deputy there, and to each  
of them, greeting. Whereas *A. O.* late of ——, in  
the said county, labourer, hath been arrested by the Con-  
stable of ——, in the said county, for suspicion of a  
felony by him, as it is said, committed, in stealing a  
black mare, of the value of 40 s. the property of *A. P.*  
of ——, in the said county, yeoman : Therefore, on  
the behalf of our said Lord the King, I command you  
and



and each of you, that you or one of you receive the said *A. O.* into your custody in the said goal, there to remain till he be delivered from your custody by the law and custom of England. Given under my hand and seal at ———, in the said county, the ——— day of ———, in the ——— year of the reign of our said Lord ———.

*Another.*

*Westmorland.*

**D.** P. Esq; &c. To the Keeper of the common goal at ———, in the said county, or to his Deputy there: These are in his Majesty's name to charge and command you, that you receive into your said goal the body of *A. O.* late of ———, in the said county, yeoman, taken by *A. C.* Constable of ———, in the said county, and by him brought before me for suspicion of felony, that is to say, for stealing ———. And that you safely keep the said *A. O.* in your said goal, until the next General Goal Delivery for the said county, [*if he be notailable; or ifailable, then thus*] until he shall thence be delivered by due course of law. And hereof fail you not, &c.

*Another.*

*Westmorland.*

**D.** P. Esq; &c. To the Keeper of ———. I send you herewithal the body of *A. O.* late of ———, in the said county, labourer, brought before me this present day, and charged with the felonious taking and carrying away forty sheep, the property of ———, which also he hath confessed upon his examination before me [*by which he is notailable :*] Therefore these are on the behalf of our said Lord the King to command you, that immediately you receive the said *A. O.* and him safely keep in your said goal, until he be thence delivered by the due order of law. Hereof fail you not, as you will answer for  
your



your contempt at your peril. Given under my hand and seal at ———.

*Or thus, in the King's Name.*

*Westmorland.* **G** E O R G E the third, by the grace of God, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth: To the Keeper of our goal at ———, in our said county of W. or to his Deputy, greeting: Whereas *A. O.* late of ———, in our said county, yeoman, is arrested for suspicion of felony, by him, as it is said; committed, in feloniously taking and carrying away ———, of the value of ———, the property of ———. We therefore command you, and each of you, that you receive him the said *A. O.* into your custody in our said goal, or that one of you do receive him, there to remain till he be delivered from your custody, according to the law of our kingdom of England. Witness *D. P. Esq;* one of the Justices assigned to keep the peace in our said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in our said county committed, at ———, in the said county, the ——— day of ———, in the ——— year of our reign:

*General Form of Conviction.*

*Westmorland.* **B** E it remembered, that on the ——— day of ———, in the ——— year of the reign of ———, by the grace of God, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, at ———, in the county of ——— aforesaid, *A. I.* of ———, cometh before me *J. P. Esq;* one of the Justices of our said Lord the King, assigned to keep the peace of our said Lord the King in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, [residing



[residing near to the place where the offence herein after mentioned ; *or as the statute requires*] and giveth me the said Justice to understand and be informed, that one *A. O.* of —, in the said county, yeoman, on the — day of —, now last past, at —, in the said county, did [*here set forth the fact, in the words of the statute as near as may be*] against the form of the statute in such case made and provided : And afterwards, upon the aforesaid — day of —, in the year aforesaid, at — aforesaid, in the county aforesaid, he the said *A. O.* after being duly summoned in this behalf before me the Justice aforesaid, appeareth and is present, in order to make his defence against the said charge contained in the said information, and having heard the same, he the said *A. O.* is asked by me the said Justice, if he can say any thing for himself, why he the said *A. O.* should not be convicted of the premises above charged upon him in form aforesaid ; who pleadeth that he is not guilty of the said offence. Nevertheless, on the day aforesaid, in the year aforesaid, at — aforesaid, in the county aforesaid, one credible witness, viz. *A. W.* of —, yeoman, cometh before me the Justice aforesaid, and before me the same Justice, upon his oath on the holy gospel, to him then and there by me the Justice aforesaid administered, deposeth, sweareth, and on his oath aforesaid affirmeth and saith, that the aforesaid *A. O.* on the — day of — aforesaid, in the year aforesaid, at — aforesaid, in the county aforesaid, did [*here again set forth the fact, or so much thereof as is sufficient to convict the offender.*] And thereupon the aforesaid *A. O.* the — day of — aforesaid, in the year aforesaid, before me the Justice aforesaid, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted ; and for his offence aforesaid hath forfeited the sum of —, of lawful money of Great-Britain, to be distributed as the statute aforesaid



aforesaid doth direct. In witness whereof, I the said Justice to this present record of the conviction as aforesaid, have set my hand and seal at — aforesaid, in the county aforesaid, the day and year first above written.

*If he confesses the fact then say, —* And because the said A. O. hath nothing to say, nor can say any thing in his own defence touching and concerning the premises aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess all and singular the said premises to be true, in manner and form as the same are charged upon him in the said information; and because all and singular the premises being heard and fully understood by me the said Justice, it manifestly appears to me. — *Or, if the party hath been summoned, and doth not appear, then say, —* Whereupon, on the said — day of —, in the year aforesaid, at — aforesaid, in the county aforesaid, he the said A. O. was duly summoned in this behalf, to appear before me, in order to make his defence against the said charge contained in the said information; but the said A. O. doth neglect to appear before me, and doth not appear, nor make any defence against the said charge as aforesaid: Therefore I the said Justice, on the said — day of —, in the year aforesaid, at — aforesaid, in the county aforesaid, do proceed to examine into the truth of the said complaint; and A. W. of —, a credible witness, cometh before me the Justice aforesaid, and before me the same Justice upon his oath, &c.

*The Coroner's Precept to summon a Jury.*

*Westmorland.* } *To the High Constable of —, in the*  
                              } *said County.*

**T**H E S E are in the name of our sovereign Lord the King, to require you, immediately upon sight hereof, to summon and warn 24 good and lawful  
N n  
men



men of the four next townships to —, in the said county, to be and appear before me *A. C.* gentleman, one of the Coroners of the county aforesaid, at — aforesaid, in the said county, on the — day of —, then and there to enquire of, do, and execute all such things as on his Majesty's behalf shall be lawfully given them in charge, touching the death of *A. D.* And be you then there to certify what you shall have done in the premises, and further to do and execute what in behalf of our said Lord the King shall be then and there enjoined you. Given under my hand and seal the — day of —.

*The Jurors Oath on the Coroner's Inquest.*

**Y**OU shall diligently enquire, and true presentment make, on the behalf of our sovereign Lord the King, how and in what manner *A. D.* (or person unknown, *as the case is*) here lying dead, came to his death; and of such other matters relating to the same as shall be lawfully required of you, according to your evidence: So help you God.

*After the Foreman is sworn, the rest may be sworn, three or four together, as follows:*

Such oath as *A. F.* the Foreman of this inquest, hath for his part taken, you and every of you shall well and truly observe and keep on your parts respectively: So help you God.

*Witnesses Oath.*

**T**HE evidence which you shall give to this inquest, on the behalf of our sovereign Lord the King, touching the death of *A. D.* shall be the truth, the whole truth, and nothing but the truth: So help you God.



*Inquisition of Murder.**Westmorland.*

**A** N inquisition indented, taken at \_\_\_\_\_, in the county of \_\_\_\_\_ afore-  
 said, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_  
 year of the reign of \_\_\_\_\_, before me *A. C.* gentle-  
 man, one of the Coroners of our Lord the King, for  
 the county afore-  
 said, upon the view of the body of *A. D.* then and there lying dead, upon the oaths of *A. B. C. D. E. F. &c.* good and lawful men of \_\_\_\_\_ afore-  
 said, and of three other of the next towns, to wit, *K. L. and M.* in the said county, who being sworn and  
 charged to enquire on the part of our said Lord the  
 King, when, where, how, and after what manner, the  
 said *A. D.* came to his death, do say, upon their oath,  
 that one *A. M.* late of \_\_\_\_\_ afore-  
 said, gentleman, not having God before his eyes, but being moved and  
 seduced by the instigation of the devil, on the \_\_\_\_\_  
 day of \_\_\_\_\_, in the \_\_\_\_\_ year of \_\_\_\_\_ afore-  
 said, at the first hour in the night of the same day, with force  
 and arms, at \_\_\_\_\_, in the county afore-  
 said, on and upon the afore-  
 said *A. D.* then and there being in the  
 peace of God and of the said Lord the King, felon-  
 ously, voluntarily, and of his malice forethought, made  
 an assault : And that the afore-  
 said *A. M.* then and there  
 with a certain sword made of iron and steel, of the value  
 of 5 s. which he the said *A. M.* then and there held in  
 his right hand, the afore-  
 said *A. D.* in and upon the left  
 part of the belly of the said *A. D.* a little above the  
 navel of the said *A. D.* then and there violently, felo-  
 niously, voluntarily, and of his malice forethought,  
 struck and pierced, and gave to the said *A. D.* then  
 and there with the sword afore-  
 said, in and upon the  
 left part of the belly of the said *A. D.* a little above the  
 navel of the said *A. D.* one mortal wound of the breadth  
 of half an inch, and of the depth of three inches, of  
 N 2 which



which said mortal wound the aforesaid *A. D.* then and there instantly died ; and so the said *A. M.* then and there feloniously killed and murdered the said *A. D.* against the peace of our said Lord the King, his crown and dignity.

And the said Jurors further say, upon their oath aforesaid, that *A. A.* of —, yeoman, and *B. A.* of —, yeoman, were feloniously present with drawn swords, at the time of the felony and murder aforesaid, in form aforesaid committed, that is to say, on the said — day of —, in the — year aforesaid, at — aforesaid, in the county aforesaid, at the first hour in the night of the said day, then and there consorting, abetting, and aiding the said *A. M.* to do and commit the felony and murder aforesaid, in manner aforesaid, against the peace of our said Lord the King, his crown and dignity.

And moreover, the Jurors aforesaid, upon their oath aforesaid, do say, that the said *A. M.* *A. A.* and *B. A.* had not, nor any of them had, nor as yet have or hath, any goods or chattels, lands or tenements, within the county aforesaid, or elsewhere, to the knowledge of the said Jurors. [Or, And the Jurors aforesaid, upon their oath aforesaid, do say, that the said *A. B.* at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels, contained in the inventory to this inquisition annexed, which remain in the custody of *B. C.*]

In witness whereof, as well the aforesaid Coroner, as the Jurors aforesaid, have to this inquisition put their seals, on the day and year aforesaid, and at the place aforesaid.

*A. C.* Coroner.

*A. B.*

*C. D.*

*E. F.* &c. Jurors.

*An*



*An Inquisition where one hangs himself.*

——— *As above to* ——— not having God before his eyes, but being seduced and moved by the instigation of the devil, at ——— afore said, in a certain wood at ——— afore said standing and being, the said *A. D.* being then and there alone, with a certain hempen cord of the value of 3 d. which he then and there had and held in his hands, and one end thereof then and there put about his neck, and the other end thereof tied about a bough of a certain oak tree, himself then and there, with the cord afore said, voluntarily and feloniously, and of his malice forethought, hanged and suffocated; and so the Jurors afore said, upon their oath afore said, say, that the said *A. D.* then and there in manner and form afore said, as a felon of himself, feloniously, voluntarily, and of his malice forethought, himself killed, strangled, and murdered, against the peace, &c.

*An Inquisition where one drowns himself.*

——— at ——— afore said, in the county afore said, then and there being alone, in a common river there, called ———, himself voluntarily and feloniously drowned; and so the Jurors afore said, upon their oath afore said, say, that the afore said *A. D.* in manner and form afore said, then and there himself voluntarily and feloniously as a felon of himself killed and murdered; against the peace ———.

*An Inquisition where one dies a natural Death.*

——— that the said *A. D.* on the ——— day of ———, in the year afore said, at the parish and in the county afore said, to wit, in a certain place called ———, was found dead; that he had no marks of violence appearing on his body, and died by the visitation of God, in a natural way, and not otherwise. In witness, &c.



*An Inquisition upon one who dies in Goal.*

———, who say upon their oath, that the aforesaid *D. A.* on the day of the taking this inquisition, being a prisoner in the goal at ———, in the county aforesaid, then and there died of the visitation of God, and then and there in manner and form aforesaid came to his death, and not otherwise. In witness, &c.

*An Inquisition on one non compos mentis.*

——— who say upon their oath, that the aforesaid *A. D.* on the day and year aforesaid, and at the time of his death, to wit, from the ——— day of ——— to the time of his death, and at the time of his death aforesaid, was a lunatic, and a person of an insane mind; and that the said *A. D.* being a lunatic, and a person of insane mind as aforesaid, did on the ——— day of ——— come alone to a certain river, called ———, in the said county, and did then and there cast himself into the said river, and drowned himself in the water of the said river. And so the Jurors aforesaid, upon their oath aforesaid, say, that the aforesaid *A. D.* from the cause aforesaid, in manner and form aforesaid, came to his death, and not otherwise. In witness, &c.

*An Inquisition on one for cutting his Throat.*

——— by the instigation of the devil, at ——— aforesaid, in the county aforesaid, in and upon himself, then and there being in the peace of God and of the said Lord the King, feloniously, voluntarily, and of his malice forethought, made an assault: And that the aforesaid *A. D.* then and there with a certain knife, of the value of one penny, which he the said *A. D.* then and there held in his right hand, himself upon his throat then and there feloniously, voluntarily, and of his malice forethought, did strike, and gave to himself then and there  
with



with the knife aforesaid, upon his throat aforesaid, one mortal wound of the breadth of four inches, and the depth of one inch, of which said mortal wound the said *A. D.* at ——— aforesaid, in the county aforesaid, languished, and languishing lived, from the said ——— day of ———, in the ——— year aforesaid, to the ——— day of ———, and that the said *A. D.* on the ——— day of ——— aforesaid, in the ——— year aforesaid, at ——— aforesaid, in the county aforesaid, of that mortal wound died. And so the Jurors aforesaid, &c.

*For killing another in his own Defence.*

———— upon their oaths say, that *A. K.* late of ———, gentleman, at ——— aforesaid, in the said county, on the ——— day of ———, in the ——— year of ———, in the peace of God and of our said Lord the King then being, *A. M.* late of ———, in the county of ———, at the hour of ———, in the afternoon of the same day, did come, and upon him the said *A. K.* then and there of his malice forethought, did make an assault, and him the said *A. K.* did then and there endeavour to beat and kill, by continuing the assault aforesaid, from the house of one *W. H.* in ——— aforesaid, to a certain place called ———, in the county aforesaid, and the said *A. K.* seeing that the said *A. M.* was so maliciously disposed, to a certain wall in the said place, called ———, did flee, and from thence for fear of death could not escape, and so the said *A. K.* himself, in preservation of his life, against the said *A. M.* continued to defend, and in his own defence him the said *A. M.* upon the right part of the breast of him the said *A. M.* with a certain sword of the price of one shilling, which the said *A. K.* then and there held in his right hand, did strike, then and there giving to the same *A. M.* one mortal wound, of the breadth of one inch, and of the  
depth



depth of three inches, of which said mortal wound the said *A. M.* at ———— aforesaid, in the county aforesaid, languished, and languishing lived from the said ———— day of ———— to the ———— day of ———— from thence next ensuing, and that the said *A. M.* on the said ———— day of ————, in the ———— year aforesaid, at ———— aforesaid, in the said county, of that mortal wound died; and so the said *A. K.* did then and there kill him the said *A. M.* in his own defence.

*An Inquisition where the Murderer is unknown.*

———The same as before, only say,———that a certain person unknown, &c. and add,———And the said Jurors upon their oath aforesaid further say, that the said person unknown, after he had committed the said felony and murder in manner aforesaid, did fly away: Against the peace, &c.

*Subpœna to give Evidence.*

**G**EORGE the third, by the grace of God, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth. To *A. B. C. D.* and *E. F.* greeting: We command you, and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our Justices assigned to keep the peace in our county of ————, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, at the General Quarter Sessions of the peace, to be holden at ————, in and for the said county, on ———— the ———— day of ————, at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of the inhabitants of the parish of ————, in the said county, against *A. O.* in a case of bastardy. And this you are in no wise  
to



*Forms for Justices of Peace, &c.*

to omit, nor any of you to omit, on pain of one hundred pounds. Witness Sir James Lowther, baronet, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of our reign.

C.

Note, There may be four witnesses put in one *subpœna*.

*A Subpœna Ticket.*

To Mr. *A. W.*

**B**Y virtue of his Majesty's writ of subpœna to you directed, and herewith shewn to you, you are personally to be before his Majesty's Justices of the Peace for the county of \_\_\_\_\_, at the General Quarter Sessions of the peace to be holden for the said county, at \_\_\_\_\_, in the said county, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ next, to testify the truth, and give evidence on behalf of the inhabitants of the parish of \_\_\_\_\_, in the said county, against *A. O.* in a case of bastardy. And this you are not to omit, upon pain of one hundred pounds. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1763.

*By the Court,*

C.

*Condition of a Recognizance to appear and give Evidence.*

**T**HE condition of this recognizance is such, that if the above bound *A. W.* shall personally appear at the next General Quarter Sessions of the Peace to be holden at \_\_\_\_\_, in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by *A. I.* of \_\_\_\_\_, yeoman, to the Grand Jury, against *A. O.* late of \_\_\_\_\_, in the said county, yeoman, for the feloniously taking and carrying away \_\_\_\_\_, the property of \_\_\_\_\_; and in case the said bill shall be found a true bill, then if the said *A. W.* shall then and there give evidence to the Jurors that shall pass on the trial of the said *A. O.* upon the

O O

said



*Forms for Justices of Peace, &c.*

aid bill of indictment, and not depart thence without leave of the Court, then this recognizance to be void, otherwise of force.

*Examination of a Felon.*

*Westmorland.* **T**HE examination of *A. O.* of —, yeoman, taken before me *Lancelot Pattenfon*, clerk, one of his Majesty's Justices of the Peace for the said county, [or, in the case of bail,—taken before us —, two of his Majesty's Justices of the Peace for the said county, and one of us of the quorum,] the — day of —, in the — year of the reign of —.

The said *A. O.* being charged before me, [or us] by *A. I.* of —, yeoman, with the felonious stealing out of the house of the said *A. I.* at —, on the — day of —, the following goods, to wit, — to the value of —, he the said *A. O.* upon his examination now taken before me, [or us] confesseth that —, [or, denieth that —] &c.

*Information of a Witness.*

*Westmorland.* **T**HE information of *A. I.* of —, yeoman, taken upon oath, before me, [as before.]

*Recognizance to give Evidence.*

*Westmorland.* **B**E it remembred, that on the — day of —, in the — year of the reign of —, *B. C.* of —, in said county, yeoman, did come before me *Lancelot Pattenfon*, clerk, one of the Justices of our said Lord the King, assigned to keep the peace in the said county, and did acknowledge himself to owe to our said Lord the King ten pounds of lawful money of Great-Britain, under condition, that if



if he shall personally appear before the Justices of our said Lord the King, at the next General Quarter Sessions of the peace, [or goal delivery] to be holden in and for the said county, then and there to give evidence in behalf of our said Lord the King, against C. D. late of —, who being attached, and suspected of felony, is now committed to the goal of our said Lord the King, in the said county, then this recognizance to be void, otherwise of force.

*Or thus, to prefer a Bill of Indictment, and give Evidence.*

*Westmorland.* **B**E it remembred, that on the — day of —, in the — year of the reign of —, B. C. of —, in the said county, yeoman, personally came before me *Lancelot Pattenson*, clerk, one of the Justices of our said Lord the King, assigned to keep the peace in the said county, and acknowledged himself to owe to our said Lord the King the sum of — of good and lawful money of Great-Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said B. C. shall fail in the condition indorsed.

*L. P.*

The condition of the within written recognizance is such, that whereas one E. F. late of —, was this present day brought before the Justice within mentioned, by the within bounden B. C. and was by him charged with the felonious taking and carrying away — of the goods of him the said B. C. and thereupon was committed by the said Justice to the common goal in and for the said county: If therefore he the said B. C. shall and do, at the next General Quarter Sessions of the peace, [or goal delivery] to be holden in and for the said county, prefer, or cause to be preferred, one



bill of indictment of the said felony against the said *E. F.* and shall then also give evidence there concerning the same, as well to the Jurors that shall then enquire of the said felony, as also to them that shall pass upon the trial of the said *E. F.* that then the said recognizance to be void, or else to stand in full force for the King.

*Warrant for a Witness.*

*Westmorland.* { *To the Constable of* ———.

**W**HEREAS oath hath been made before me ———, one of his Majesty's Justices of the Peace in and for the said county, by *B. I.* of ———, yeoman, that he the said *B. I.* was lately robbed at ———, and that he hath good cause to believe that *B. W.* of ———, is a material witness to prove by whom the said robbery was committed: These are therefore to require you to cause the said *B. W.* forthwith to come before me, to give such information and evidence as he knoweth concerning the said offence, that such further proceeding may be had therein, as to the law doth appertain. Given under my hand and seal at ———, in the said county, the ——— day of ———.

*Warrant for Felony.*

*Westmorland.* { *To the Constable of* ———.

**F**ORASMUCH as *B. I.* of ———, in the county of ———, yeoman, hath this day made information and complaint upon oath, before me ———, one of his Majesty's Justices of the Peace for the said county, that this present day divers goods of him the said *B. I.* to wit, ———, have feloniously been stolen, taken, and carried away, from the house of him the said *B. I.* at ——— aforesaid, in the county aforesaid, and that



that he hath just cause to suspect, and doth suspect, that B. O. late of ———, yeoman, feloniously did steal, take and carry away the same, [*or otherwise as the case shall be :*] These are therefore to command you forthwith to apprehend him the said B. O. and to bring him before me, to answer unto the said information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the ——— day of ———, in the year ———.

*Indictment for a forcible Entry and Detainer at common Law.*

*Westmorland.* **T**HE Jurors for our Lord the King upon their oath present, that B. O. late of ———, in the county aforesaid, gentleman, and C. O. late of the same, yeoman, together with divers other malefactors, and disturbers of the peace of our said Lord the King (whose names to the Jurors aforesaid are yet unknown) on the ——— day of ———, in the ——— year of the reign of ———, with force and arms, at ——— aforesaid, in the county aforesaid, unlawfully and injuriously did enter into a certain barn, and a certain orchard, then and there being in the possession of one B. I. and that the said B. O. and C. O. together with the said other malefactors, then and there, with force and arms, unlawfully and injuriously did expel, amove, and put out the said B. I. from the possession of the said barn and orchard, and the said B. I. so as aforesaid expelled, amoved, and put out from the possession of the said barn and orchard, then and there, with force and arms, unlawfully and injuriously did keep out, and still do keep out, to the great damage of him the said B. I. and against the peace of our said Lord the King, his crown and dignity.

*Indictment*



*Indictment on the Statute.*

*Westmorland.* **T**HE Jurors for our Lord the King upon their oath present, that *B. I.* late of the parish of —, in the county aforesaid, gentleman, on the — day of —, in the — year of the reign of —, was possessed of a certain messuage, with the appurtenances, situate, lying and being, in —, in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof, one *B. O.* late of —, in the said county, yeoman, afterwards, to wit, the said — day of —, in the year aforesaid, into the same messuage, with the appurtenances aforesaid, in — aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said *B. I.* from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said *B. I.* from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said *B. O.* him the said *B. I.* from the aforesaid — day of —, in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and still doth keep out, to the great damage of the said *B. I.* against the peace of our said Lord the King, and against the form of the statutes in that case made and provided.

*Note, If it is a freehold, then the party must be said to be seized thereof in his demesne as of fee; and consequently he must be thereof disseized: Otherwise if it is of a lesser estate, of which he is not properly said to be seized, but possessed*



seised thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be expelled, ejected, amoved, or the like.

### Record of a forcible Detainer upon View.

*Note, The books upon the office of a Justice of the Peace do generally set forth, that the record ought to be in the present tense, and not in the time past (and herewith do accord the adjudged cases in the Court of King's Bench, Str. 443;) yet nevertheless they do all exhibit the form of a record in the time past, and not in the present: Therefore I have taken the liberty to alter the same, from the record in L. Raymond, of the conviction of Sir Edm. Elwell, and others; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible detainer, rather than of a forcible entry, because the Justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof until after the entry is made.*

Kent, **B**E it remembred, that on the 15th day of to wit. September, in the first year of the reign of our soveraign Lord George the second, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, at Beckingham, in the county of Kent aforesaid, Eliz. Elwell complained to us Sir E. Betteson, baronet, P. Burrel, and W. Passenger, Esquires, three of the Justices of our said Lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, that Sir Edm. Elwell, late of London, Baronet, Joseph Billers, late of ———, and Daniel Monty, late of ———, into the messuage of her the said E. E. being the mansion house of her the said E. E. called Langley house, situate within



within the parish of Beckingham aforesaid, did enter, and her the said *E. E.* of the messuage aforesaid, whereof the said *E. E.* at the time of the entry aforesaid, was seized as of the freehold of her the said *El. E.* for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said *El. E.* unlawfully, with strong hand, and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same *El. E.* then, to wit, on the said 15th day of September, at the parish of B. aforesaid, prayeth of us, so as aforesaid being Justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid: Which complaint and prayer by us the aforesaid Justices being heard, we the aforesaid *E. B.* baronet, *P. B.* and *W. P.* Esquires, Justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid *Edm. E. J. B.* and *D. M.* the aforesaid messuage, with force and arms, unlawfully, with strong hand, and armed power, detaining, against the form of the statute in such case made and provided, according as she the same *El. E.* so as is aforesaid hath unto us complained: Therefore it is considered by us the aforesaid Justices, that the aforesaid *Edmund Elwell*, *Joseph Billers*, and *Daniel Monty*, of the detaining aforesaid with strong hand, by our own proper view then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid: Whereupon we the Justices aforesaid, upon every of the aforesaid *Ed. E. J. B.* and *D. M.* do set and impose severally a fine of 10 l. of good and lawful money of Great-Britain, to be paid by them and every of them severally to our said sovereign Lord the King, for the said offences; and do cause them, and every of them, then and there to be arrested;



arrested; and the same *Ed. E. J. B.* and *D. M.* being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid Justices are committed, and every of them is committed, to the goal our said Lord the King, at Maidstone, in the county of Kent aforesaid, being the next goal to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our said Lord the King, for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we the aforesaid *E. B.* baronet, *P. B.* and *W. P.* Esquires, the Justices aforesaid, to this record our hands and seals do set, at the parish of *B.* aforesaid, in the county of Kent aforesaid, on the 15th day of September, in the first year aforesaid of the reign of our said Sovereign Lord the now King.

*Mittimus for forcible Detainer.*

*Westmorland.* **E** *D W A R D* Hassel, Esquire, one of the Justices of our Sovereign Lord the King's Majesty, assigned to keep the peace within the said county of *W.* and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed; To the Keeper of his Majesty's goal at ———, in the said county, and to his deputy and deputies there, and to every of them, greeting. Whereas upon complaint made unto me this present day, by *A. I.* of ———, in the said county, yeoman, I went immediately to the dwelling-house of the said *A. I.* at ——— aforesaid, in the said county, and there found *A. O.* late of ———, labourer, *B. O.* late of the same, weaver, and *C. O.* late of ———, butcher, forcibly, with strong hand and armed power,  
P p holding



holding the said house, against the peace of our said Lord the King, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said *A. O. B. O.* and *C. O.* convicted of the said forcible holding, by mine own view, testimony and record; commanding you, in his said Majesty's name, to receive them into your said goal, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sum of 10*l.* of good and lawful money of Great-Britain, to our said Sovereign Lord the King, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at \_\_\_\_\_ aforesaid, in the county aforesaid, under my seal, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our said Sovereign Lord King George the third.

*Note, By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.*

*Precept to the Sheriff to return a Jury.*

*Westmorland.* **H**ENRY Aglionby, Esquire, one of the Justices of our Lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed; To the Sheriff of the said county, greeting: On behalf of our said Lord the King, I command you, that you cause to come before me, at \_\_\_\_\_, in the county aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood



hood of ——— aforeſaid, in the county aforeſaid, every of whom ſhall have lands or tenements of 40 s. yearly at the leaſt, above reſprizes, to enquire upon their oaths for our ſaid Lord the King, of a certain entry made with ſtrong hand (as it is ſaid) into the meſſuage of one *A. I.* at ——— aforeſaid, in the county aforeſaid, againſt the form of the ſtatute in ſuch caſe made and provided. And you are to return upon every of the jurors by you in this behalf to be impannelled, 20 s. of iſſues at the aforeſaid day. And have you then there this precept. And this you ſhall in no wiſe omit, upon the peril that ſhall thereof enſue. Witneſs the ſaid *J. P.* at ———, in the county aforeſaid, the ——— day of ———, in the ——— year of the reign of ———.

*The Jurors Oath.*

**Y**OU ſhall true enquiry and preſentment make of all ſuch things as ſhall come before you, concerning a forcible entry [*or detainer*] ſaid to have been lately committed in the dwelling-houſe of ———, yeoman, at ———, in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you: So help you God.

The oath that *A. F.* your foreman, hath taken on his part, you and every of you ſhall truly obſerve and keep, on your parts: So help you God.

*The Inquiſition, Indictment, or finding of the Jury.*  
*Westmorland.* **A**N inquiſition for our Sovereign Lord the King, indented and taken at ———, in the ſaid county, the ——— day of ———, in the ——— year of the reign of ———, by the oaths of ———, good and lawful men of the ſaid county, before *J. P.* Eſq:



one of the Justices of our said Lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the same county committed, who say upon their oaths aforesaid, that *A. I.* of ——— aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee [*if it is not freehold, then say, possessed*] of and in one messuage, with the appurtenances in ——— aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until *A. O.* late of ———, yeoman, *B. O.* late of the same, yeoman, and *C. O.* late of the same, yeoman, and other malefactors unknown, the ——— day of ———, now last past, with strong hand, and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said *A. I.* thereof disseised, and with strong hand expelled; and him the said *A. I.* so disseised and expelled from the said messuage, with the appurtenances aforesaid, from the said ——— day of ———, until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said Lord the King, and against the form of the statute in such case made and provided.

We whose names are hereunto set, being the Jurors abovesaid, do, upon the evidences now produced before us, find the inquisition aforesaid true.

*A. B.*

*C. D. &c.*

*Warrant to the Sheriff for Restitution.*

*Westmorland.*

**H**ENRY Fletcher, Esq; one of the Justices of our Sovereign Lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and



and other misdemeanours in the said county committed;  
To the Sheriff of the said county, greeting: Whereas  
by an inquisition taken before me the Justice aforesaid,  
at —, in the county aforesaid, on this present —  
day of —, in the — year of the reign of  
—, upon the oaths of —, and by virtue of the  
statutes made and provided in cases of forcible entry  
and detainer, it is found, that *A. O.* late of —, yeo-  
man, and *B. O.* late of —, yeoman, on the — day  
of — now last past, into a certain messuage, with the  
appurtenances, of *A. I.* of — aforesaid, in the  
county aforesaid, gentleman, situate, lying and be-  
ing at — aforesaid, in the county aforesaid, with  
force and arms did enter, and him the said *A. I.* thereof  
then with strong hand did disseise and drive out, and  
him the said *A. I.* thus driven out from the aforesaid  
messuage, with the appurtenances, from the — day of  
— aforesaid, to this present day of the taking of the  
said inquisition, with strong hand and armed force did  
keep out, and do yet keep out, as by the inquisition  
aforesaid more fully appeareth of record: Therefore on  
the behalf of our said Sovereign Lord the King, I charge  
and command you, that taking with you the power of  
the county (if it be needful) you go to the said messuage  
and other the premises, and the same with the appurte-  
nances you cause to be resealed, and that you cause the  
said *A. I.* to be restored and put into his full possession  
thereof, according as he, before the entry aforesaid, was  
seised, according to the form of the said statutes. And  
this you shall in no wise omit, on the penalty thereon  
incumbent. Given under my hand and seal at —, in  
the said county, the — day of —, in the —  
year of the reign of —.



*Warrant of Distress for not working at the Highways.*

*Westmorland.* } *To the Constable of ———.*

**W**HEREAS *A. O.* of ———, in the county  
aforesaid, yeoman, is duly convicted before us  
———, two of his Majesty's Justices of the Peace for  
the said county, by the oath of *A. W.* a credible wit-  
ness, for that he the said *A. O.* occupying a ploughland  
in tillage (*or* pasture) in the said parish [*or*, keeping a  
draught or plough in the said parish, *or otherwise as the  
case shall be*] was duly summoned by *A. S.* Surveyor of  
the highways of the parish of ———, in the said coun-  
ty, to find and send on the ——— day of ——— now  
last past, to work and travel in the amendment of the  
highways at ———, in the parish aforesaid, in the  
county aforesaid, one wain or cart, furnished after the  
custom of the country with oxen, horses or other cattle,  
and other necessaries meet to carry things convenient for  
that purpose, and also two able men with the same; but  
that he the said *A. O.* did neglect and make default,  
and did not find and send one wain or cart, furnished as  
aforesaid, with two able men as aforesaid, to work and  
travel on the said ——— day of ———, in the amend-  
ment of the said highways as aforesaid, whereby he  
hath forfeited the sum of 10 s. These are therefore  
in his said Majesty's name to command you to levy  
the said sum by distress of the goods of him the said *A.  
O.* And if within the space of [five] days next after  
such distress by you taken, the said sum of 10 s. toge-  
ther with reasonable charges of taking and keeping the  
said distress, shall not be paid; that then you do sell the  
said goods so by you distrained as aforesaid, and out of  
the money, arising by such sale, that you do pay the  
said sum of 10 s. to him the said *A. S.* who informed us  
of the said offence, and sueth before us for the for-  
feiture



seizure aforesaid; returning to him the said *A. O.* the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted: Herein fail you not. Given under our hands and seals at our special sessions for the amendment of the highways, holden at ———, in the said county, the ——— day of ———, in the ——— year of ———.

*Warrant to levy Hue and Cry, on a Robbery having been committed.*

*Westmorland.* { *To all Constables and other Officers, as well in the said County of Westmorland as elsewhere, to whom the Execution hereof doth or shall belong.*

**W**HEREAS *A. I.* of ———, in the county of ———, yeoman, hath this day made information upon oath, before me *J. P. Esq;* one of his Majesty's Justices of the Peace in and for the said county of *W.* that on this present ——— day of ———, in the ——— year of the reign of ———, betwixt the hours of three and four in the afternoon of the same day, at a place called ———, in the said county of *W.* in the King's highway there, two malefactors and felons, to him the said *A. I.* unknown, in and upon him the said *A. I.* then and there being in the peace of God and of our Lord the King, feloniously did make an assault, and him the said *A. I.* then and there feloniously did put in great fear and danger of his life, and the sum of ———, of lawful money of Great-Britain, of the goods and chattels of him the said *A. I.* from the person, and against the will of him the said *A. I.* then and there violently and feloniously did steal, take and carry away; and that one of the said malefactors and felons, to him the said *A. I.* unknown, is a tall, strong man, and seemeth to be about the age of ——— years, is pitted in his



his face with the small-pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c. and did ride upon a bay gelding, with a star on his forehead; and the other, &c. And that after the said felony and robbery committed, they the said malefactors and felons, to him the said *A. I.* unknown, did fly, and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein, for the persons above described, and to make fresh pursuit and hue and cry after them from town to town, and from county to county, as well by horsemen as by footmen; and to give due notice hereof in writing, describing in such notice the persons and the offence aforesaid, unto every next Constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit, as otherwise, apprehend, or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said Majesty's Justices of the Peace in and for the county where he or they shall be so apprehended, to be by such Justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal, at ———, in the said county of W. the ——— day of ——— aforesaid, in the year aforesaid.

*Form of an Indictment for Murder.*

*Westmorland.*

**A**T the general Quarter Sessions of the Peace holden at Appleby, in and for the county aforesaid, the seventh day of April, in



in the first year of the reign of our Sovereign Lord George the third, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, before J. P. and K. P. Esquires, and others their associates, Justices of our said Lord the King, assigned to keep the peace of our said Lord the King in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, by the oath of ———, good and lawful men of the county aforesaid, sworn and charged to enquire for our said Lord the King, and for the body of the county aforesaid, it is presented,

That *John Armstrong*, late of *Appleby*, in the county aforesaid, yeoman, not having God before his eyes, but being moved and seduced by the instigation of the devil, on the thirtieth day of March, in the first year of the reign of our said Sovereign Lord George the third, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, at the hour of nine in the afternoon of the same day, with force and arms, at *Appleby* aforesaid, in the county aforesaid, in and upon one *George Harrison*, in the peace of God and of our said Lord the King then and there being (the aforesaid *George Harrison* not having any weapon then drawn, nor the aforesaid *George Harrison* having first stricken the said *John Armstrong*) feloniously did make an assault; and that the aforesaid *John Armstrong*, with a certain drawn sword of the value of five shillings, which he the said *John Armstrong* in his right hand then and there had and held, the said *George Harrison* in and upon the right side of the belly, near the short ribs of him the said *George Harrison* (the aforesaid *George Harrison*, as is aforesaid, then and there not having any weapon drawn, nor the aforesaid *George Harrison* then and there having first stricken the said *John Armstrong*) then and

Q q

there



there feloniously did stab and thrust, giving unto the said *George Harrison* then and there with the sword aforesaid, in form aforesaid, in and upon the right side of the belly, near the short ribs of him the said *George Harrison*, one mortal wound, of the breadth of one inch, and of the depth of nine inches; of which said mortal wound he the said *George Harrison* then and there instantly died: And so the Jurors aforesaid upon their oath aforesaid do say, that the said *John Armstrong* him the said *George Harrison*, on the aforesaid thirtieth day of March, in the year aforesaid, at Appleby aforesaid, in the county aforesaid, in manner and form aforesaid, feloniously did kill; against the peace of our said Lord the now King, his crown and dignity, and against the form of the statute in such case made and provided.

*Form of an Information qui tam.*

*Westmorland.* **B**E it remembred, that *A. I.* of ———, in the county of ———, gentleman, who as well for our Lord the now King as for himself doth prosecute, cometh before the Justices of our said Lord the King assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, at their general Quarter Sessions of the Peace holden at ———, in and for the said county, the ——— day of ———, in the ——— year of the reign of ———, in his proper person; and as well for the same Lord the King, as for himself, giveth the Court here to understand and be informed, That *A. O.* late of ———, in the county aforesaid, yeoman, on the ——— day of ———, in the year aforesaid, at ——— aforesaid, in the county aforesaid, not regarding the laws and statutes of our said Lord the King, but intending to ———, with force and arms [*here insert*



*insert the offence with the same precision as in an indictment]* against the form of the statute in that case made and provided: Whereupon the aforesaid *A. I.* as well for the said Lord the King, as for himself, prayeth the advice of this Court in the premises; and that the aforesaid *A. O.* may forfeit the sum of ———, according to the form of the statute aforesaid; and that he the same *A. I.* may have one moiety thereof, according to the form of the statute aforesaid; and also that the aforesaid *A. O.* may come here into this Court, to answer concerning the premises; and there are pledges of prosecuting, *John Doe* and *Richard Roe*. And hereupon it is commanded to the said *A. O.* that all other things omitted, and all excuses laid aside, he be in his proper person at the next general Quarter Sessions of the Peace to be holden for the said county, to answer as well to our said Lord the King, as to the said *A. I.* who as well for the said Lord the King, as for himself, doth prosecute, of and concerning the premises, and further to do and receive what the said Court shall consider in this behalf.

*Commission of Justices of the Peace.*

**G**EORGE the third, by the grace of God, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth. To *A. B. C. D. &c.* greeting.

Know ye, that we have assigned you, jointly and severally, and every one of you, our Justices to keep our peace in our county of W. And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force,  
 Q q 2 form,



form, and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought be done, according to the form of those ordinances and statutes; and to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept.

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid *A. B. C. D. &c.* we will shall be one) our Justices to enquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, inchantments, forceries, art magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the Justices of our Peace may or ought lawfully to enquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; and also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; and also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim or cut or kill our people; and also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the  
form



form of the ordinances and statutes, or any one of them therefore made, for the common benefit of England and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; and also of all Sheriffs, Bailiffs, Stewards, Constables, Keepers of goals, and other officers, who in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; and of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; and to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our Justices of the Peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted; until they can be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, inchantments, forceries, arts magic, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done; and the same offenders, and every of them, for their offences, by fines, ransoms, amerciaments, forfeitures, and other means as according to the law and custom of England, or  
form



form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

Provided always, that if a case of difficulty, upon the determination of any the premises, before you, or any two or more of you, shall happen to arise; then let judgment in no wise be given thereon, before you, or any two or more of you, unless in the presence of one of our Justices of the one or other bench, or of one of our Justices appointed to hold the assizes in the aforesaid county.

And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places, which you, or any such two or more of you as is aforesaid shall appoint for these purposes, into the premises ye make enquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England: Saving to us the amerciaments, and other things to us therefrom belonging.

And we command by the tenure of these presents our Sheriff of W. that at certain days and places, which you or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premises shall be the better known and enquired into.

Lastly, we have assigned you the aforesaid *A. B.* Keeper of the rolls of our peace in our said county. And therefore you shall cause to be brought before you and  
your



your said fellows, at the days and places aforesaid, the writs, precepts, processses, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, &c.

*Warrant for Larceny:*

*Westmorland.* { *To the Constable of* ———.

**F**ORASMUCH as *A. I.* of ———, in the county of ———, yeoman, hath this day made information and complaint upon oath, before me ———, one of his Majesty's Justices of the Peace for the said county, that this present day divers goods of him the said *A. I.* to wit, ———, have feloniously been stolen, taken, and carried away from the house of him the said *A. I.* at ——— aforesaid, in the county aforesaid, and that he hath just cause to suspect, and doth suspect, that *A. O.* late of ———, yeoman, feloniously did steal, take, and carry away the same: These are therefore to command you forthwith to apprehend him the said *A. O.* and to bring him before me, to answer unto the said information and complaint, and to be further dealt withal according to law: Herein fail you not. Given under my hand and seal the ——— day of ———, in the year ———.

*Warrant*



*Warrant on the 3 C. c. 1, and 29 C. 2, c. 7, to levy 20 s. on a Carrier for travelling on the Lord's Day.*

*Westmorland.* { *To the Constable of ———, in the said County, and to the Churchwardens of the Parish of ———, in the said County.*

**F**ORASMUCH as *A. O.* of ———, in the ———, carrier, is duly convicted before me *J. P. Esq;* one of his Majesty's Justices, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, for that he the said *A. O.* on the ——— day of ———, in the ——— year of the reign of ———, being the Lord's day, commonly called Sunday, with his horses into and through the said parish of ———, did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of 20 s. of lawful money of England; these are therefore to command you forthwith to levy the said sum of 20 s. by distraining the goods and chattels of him the said *A. O.* And if within the space of [five] days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of 6 s. 8 d. part of the said sum of 20 s. to *A. I.* of ———, yeoman, who informed me of the said offence, and that you see the remaining sum of 13 s. 4 d. employed to the use of the poor of your said parish of ———, returning to him the said *A. O.* the overplus upon demand, the reasonable charges of taking, keeping and selling the said distress, being first deducted. And you are to certify to me, with the return of this precept, what you shall have



have done in the execution thereof. Herein fail you not. Given under my hand and seal at ———, in the said county, the ——— day of ———.

*The Oath of Allegiance, by the 1 G. st. 2, c. 13.*

**I** A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George: So help me God.

*The Oath of Supremacy, by the 1 G. st. 2, c. 13.*

**I** A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm: So help me God.

*The Oath of Abjuration, by the 1 G. st. 2, c. 13.*

**I** A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign Lord King George is lawful and rightful King of this realm, and all other his Majesty's dominions thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that the person pretended to be Prince of Wales, during the life of the late King James, and since his decease, pretending to be, and taking upon himself, the stile and title of King of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the stile and title of King of Great-Britain, hath not any right or title, whatsoever



to the crown of this realm, or any other the dominions thereunto belonging : And I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, that I will bear faith and true allegiance to his Majesty King George, and him will defend, to the utmost of my power, against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his Majesty, and his successors, all treasons and traiterous conspiracies which I shall know to be against him, or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain and defend, the succession of the crown against him the said James, and all other persons whatsoever; which succession, by an act, intituled, *an act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands limited to the Princess Sophia, Electress and Dutchess Dowager of Hanover, and the heirs of her body, being Protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian : So help me God.

*The Declaration against Transubstantiation; by the 25  
C. 2, c. 2, f. 9.*

**I** *A. B.* do declare, that I do believe, that there is not any transubstantiation in the sacrament of the Lord's supper, or in the elements of bread and wine, at  
or



or after the consecration thereof, by any person whatsoever.

*The Declaration against Popery; by the 30 C. 2, st. 2, c. 1.*

**I** A. B. do solemnly and sincerely, in the presence of God, profess, testify and declare, that I do believe, that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof, by any person whatsoever: And that the invocation, or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous. And I do solemnly, in the presence of God, profess, testify and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the Pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the Pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null or void from the beginning.

*Quakers Declaration of Fidelity; by the 8 G. c. 6.*

**I** A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to King George; and do solemnly, sincerely, and truly profess, testify and declare, that I do from my heart abhor, de-



test, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign Prince, person, prelate, state or potentate, hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

*Quakers Declaration of Abjuration.*

**I** A. B. do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that King George is lawful and rightful King of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe the person pretended to be the Prince of Wales, during the life of the late King James, and since his decease, pretending to be, and taking upon himself the stile and title of King of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the stile and title of King of Great-Britain, hath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to him. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to King George, and to him will be faithful against all traiterous conspiracies, and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavours to disclose and make known to King George, and his successors, all treasons and traiterous conspiracies, which I shall know to be against him, or any of them. And I will be true and faithful to the succession of the crown against



against him the said James, and all other persons whatsoever, as the same is and stands settled by an act, intituled, *an act declaring the rights and liberties of the subject, and settling the succession of the crown*, to the late Queen Anne, and the heirs of her body, being Protestants; and as the same, by one other act, intituled, *an act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands settled and intailed, after the decease of the said late Queen; and for default of issue of the said late Queen, to the late Princess Sophia, Electress and Dutchess Dowager of Hanover, and the heirs of her body, being Protestants. And all these things I do plainly and sincerely acknowledge, promise and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.

*The Quakers Profession of their Belief; by the 1 W. c. 18.*

**I** A. B. profess faith in God the father, and in Jesus Christ his eternal son, the true God, and in the holy spirit, one God blessed for evermore; and do acknowledge the holy scriptures of the old and new testament to be given by divine inspiration.

*The Form of a general Order of Removal of the Poor.*

*Westmorland.* **T**O the Churchwardens and Overseers of the Poor of the parish of Orton, in the said county of Westmorland, and to the Churchwardens and Overseers of the Poor of the parish of Penrith, in the county of Cumberland, and to each and every of them.

Upon



Upon the complaint of the Churchwardens and Overseers of the Poor of the parish of Orton aforesaid, in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his Majesty's Justices of the Peace, in and for the said county of Westmorland, and one of us of the quorum, that *John Thompson*, *Mary*, his wife, *Thomas*, their son, aged eight years, and *Agnes*, their daughter, aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, nor produced any certificate owning them or any of them to be settled elsewhere, and that the said *John Thompson*, *Mary*, his wife, and *Thomas* and *Agnes*, their children, are likely to be chargeable to the said parish of Orton; we the said Justices, upon due proof made thereof, as well upon the examination of the said *John Thompson* upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said *John Thompson*, *Mary*, his wife, and *Thomas* and *Agnes*, their children, is in the said parish of Penrith, in the said county of Cumberland: We do therefore require you the said Churchwardens and Overseers of the Poor of the said parish of Orton, or some or one of you, to convey the said *John Thompson*, *Mary*, his wife, and *Thomas* and *Agnes*, their children, from and out of the said parish of Orton, to the said parish of Penrith, and them to deliver to the Churchwardens and Overseers of the Poor there, or to some or one of them, together with our order, or a true copy thereof, at the same time shewing to them the original: And we do also hereby require you the said Churchwardens and Overseers of the Poor of the parish of Penrith, to receive and provide for them as inhabitants of  
of



of your parish. Given under our hands and seals the  
 — day of —, in the — year of the reign of his  
 said Majesty King George the third.

*Form of an Order of Removal of a Certificate Person.*

*Westmorland.* { *To the Churchwardens and Overseers of  
 the Poor of the Parish of Orton, in the  
 said County of Westmorland, and to the  
 Churchwardens and Overseers of the  
 Poor of the Parish of Penrith, in the  
 County of Cumberland.*

**W** H E R E A S complaint hath been made by the  
 Churchwardens and Overseers of the Poor of  
 the parish of Orton aforesaid, in the said county of  
 Westmorland, unto us whose names are hereunto set,  
 and seals affixed, being two of his Majesty's Justices of  
 the Peace, in and for the said county of Westmorland,  
 and one of us of the quorum, that *John Thompson, Mary,*  
 his wife, *Thomas*, their son, aged eight years, and *Agnes*,  
 their daughter, aged four years, having for some time  
 last past dwelt in the parish of Orton aforesaid, being  
 allowed so to do by reason of a certificate, bearing date  
 the — day of —, in the year of our Lord  
 —, under the hands and seals of *A. C.* and *B. C.*  
 Churchwardens, and *A. O.* and *B. O.* Overseers of the  
 Poor of the said parish of Penrith, attested by *A. W.*  
 and *B. W.* two credible witnesses, and allowed by *J. P.*  
 and *K. P.* Esquires, two of his Majesty's Justices of the  
 Peace for the said county of Cumberland, according to  
 the directions of the several acts of Parliament in such  
 case made and provided, are become chargeable to the  
 said parish of Orton; and whereas it appears to us, as  
 well upon the oath of the said *John Thompson* as other-  
 wise, that neither they the said *John Thompson, Mary,*  
 his wife, *Thomas* and *Agnes*, their children, nor any of  
 them,



them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premises, it appears to us, and we do hereby adjudge, that the said *John Thompson, Mary*, his wife, and *Thomas and Agnes*, their children, are become chargeable to the said parish of Orton, and that the place of the last legal settlement of them, and every of them, is in the said parish of Penrith, in the said county of Cumberland: These are therefore to require you the said Churchwardens and Overseers of the Poor of the said parish of Orton, or some or one of you, to convey the said *John Thompson, Mary*, his wife, and *Thomas and Agnes*, their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the Churchwardens and Overseers of the Poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original: And we do also hereby require you the said Churchwardens and Overseers of the Poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of —, in the year of our lord —.

*Form of an Order of Removal of one having no Certificate. Westmorland.*

**T**O the Churchwardens and Overseers of the Poor of the parish of Orton, in the said county of Westmorland, and to the Churchwardens and Overseers of the Poor of the parish of Penrith, in the county of Cumberland, and to each and every of them.

Upon the complaint of the Churchwardens and Overseers of the Poor of the parish of Orton aforesaid, in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his Majesty's



Majesty's Justices of the Peace in and for the said county of Westmorland, and one of us of the quorum, that *John Thompson, Mary*, his wife, *Thomas*, their son, aged eight years, and *Agnes*, their daughter, aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, and that the said *John Thompson, Mary*, his wife, and *Thomas* and *Agnes*, their children, are now chargeable to the said parish of Orton; we the said Justices, upon due proof made thereof, as well upon the examination of the said *John Thompson* upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of them the said *John Thompson, Mary*, his wife, and *Thomas* and *Agnes* their children, is in the said parish of Penrith, in the said county of Cumberland: We do therefore require you the said Churchwardens and Overseers of the Poor of the said parish of Orton, or some or one of you, to convey the said *John Thompson, Mary*, his wife, and *Thomas* and *Agnes*, their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the Churchwardens and Overseers of the Poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; and we do also hereby require you the said Churchwardens and Overseers of the Poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of his said Majesty King George the third.



*Order for Maintenance.**Westmorland.*

**W**HEREAS *A. P.* of ———, in the parish of ———, in the said county of ———, yeoman, hath made oath before me ———, one of his Majesty's Justices of the Peace for the said county, that he the said *A. P.* is very poor and impotent, and not able to work; and that he the said *A. P.* did on ——— last apply for relief to the parishioners of the said parish of ———, at a vestry (or public) meeting [*or, to A. B. and C. D. two of the Overseers of the Poor of the said parish*] and was by them refused to be relieved; and whereas *A. B. and C. D. Overseers of the Poor of the said parish*, have been duly summoned by me, to shew cause why relief should not be given to the said *A. P.* and have appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid [*or, but have made default to appear before me according to such summons:*] I do therefore hereby order the Churchwardens and Overseers of the Poor of the said parish, or some of them, to pay unto the said *A. P.* the sum of ———, weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise ordered according to law to forbear the said allowance. Given under my hand and seal at ———, in the said county, the ——— day of ———, in the ——— year ———.

*Contract for Maintenance.*

**A**T a public meeting of the inhabitants of the parish of ———, in the county of ———, for that purpose assembled, upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between *A. B. and C. D. Churchwardens, and E. F.* and



and G. H. Overseers of the Poor of the said parish, of the one part, and A. M. of ———, in the said parish, yeoman, of the other part; that he the said A. M. shall and will, during the space of one whole year, to commence from ——— next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people, as shall be lawfully entitled to relief and maintenance from the said parish, and shall be brought unto him by the Churchwardens or Overseers of the Poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, cloathing, employment, and other things necessary for their keeping and maintenance; and that in consideration thereof, the said Churchwardens and Overseers of the Poor, and their successors respectively, shall pay or cause to be paid to the said A. M. the sum of ———, in equal proportions.———The said A. M. to have moreover and take to himself the benefit of the said poor peoples work, labour and service, during the said term. In witness whereof the parties to these presents have hereunto set their hands, the ——— day of ———.

*Recognizance with Sureties.*

*Westmorland.*

**B**E it remembred, that on the ——— day of ———, in the ——— year of the reign of our Lord George the third, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, A. O. of ———, in the county aforesaid, yeoman, and A. S. of ———, in the county aforesaid, taylor, and B. S. of ———, in the county aforesaid, labourer, personally came before me, J. P. Esq; one of the Justices of our said Lord the King, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said Lord the



King; that is to say, the said *A. O.* the sum of 20 l. and the said *A. S.* and *B. S.* each the sum of 10 l. separately, of good and lawful money of Great-Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if the said *A. O.* shall make default in the condition hereon indorsed [*or*, here under written.]

Acknowledged before me,

*J. P.*

*Recognizance without Sureties.*

*Westmorland.* **B**E it remembred, that on the ——— day of ———, in the ——— year of the reign of our Lord George the third, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, *A. O.* of ———, in the said county, yeoman, personally came before me *J. P.* Esq; one of the Justices of our said Lord the King, assigned to keep the peace in the said county, and acknowledged himself to owe to our said Lord the King 10 l. of good and lawful money of Great-Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said *A. O.* shall fail in the condition under written [*or*, indorsed.]

*J. P.*

The condition of the above written [*or*, within written] recognizance is such, that if the above bound *A. O.* shall ———: Then the said recognizance to be void, or else to remain in its force.

*Form*



*Form of a Search Warrant.*

*Westmorland.* } *To the Constable of ———.*

**W**HEREAS it appears to me J. P. Esq; one of the Justices of our Lord the King, assigned to keep the peace in the said county, by the information on oath of *A. I.* of ———, in the county aforesaid, yeoman, that the following goods, to wit, ———, have within two days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away, out of the house of the said *A. I.* at ——— aforesaid, in the county aforesaid; and that the said *A. I.* hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of *A. O.* of ———, in the said county, yeoman: These are therefore, in the name of our said Lord the King, to authorize and require you, with necessary and proper assistants, to enter in the day time into the said dwelling-house of the said *A. O.* at ——— aforesaid, in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said *A. O.* before me, or some other of the Justices of our said Lord the King, assigned to keep the peace in the county aforesaid, to be disposed of and dealt withal according to law. Given under my hand and seal at ———, in the said county, the ——— day of ———, in the ——— year of the reign of ———.

*The Sheriff's Oath.*

**I** *A. B.* do swear, that I will well and truly serve the King's Majesty in the office of Sheriff in the county of ———, and promote his Majesty's profit in all things that belong to my office, as far as I legally can  
or



or may ; I will truly preserve the King's rights, and all that belongeth to the crown ; I will not assent to decrease, lessen, or conceal the King's right, or the rights of his franchises ; and whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again ; and if I may not do it myself, I will certify and inform the King thereof, or some of his Judges ; I will not re-  
spite or delay to levy the King's debts, for any gift, promise, reward, or favour, where I may raise the same without great grievance to the debtors ; I will do right as well to poor as rich, in all things belonging to my office ; I will do no wrong to any man, for any gift, reward or promise, nor for favour or hatred ; I will disturb no man's right, and will truly and faithfully acquit at the exchequer, all those of whom I shall receive any debts or duties belonging to the crown ; I will take nothing whereby the King may lose, or whereby his right may be disturbed, injured, or delayed ; I will truly return and truly serve all the King's writs, according to the best of my skill and knowledge ; I will take no bailiffs into my service, but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their business and occupation ; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm ; I have not sold or lett to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor will I sell or lett to farm, nor contract for, or grant for reward or benefit, by myself or any other person for me, or for my  
use,



use, directly or indirectly, my sherriffwick or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave myself in my office, for the honour of the King, and the good of his subjects, and discharge the same according to the best of my skill and power: So help me God.

*Warrant for the Peace, or good Behaviour, in the King's Majesty's Name.*

*Westmorland.* **G**EORGE the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth. To our Sheriff of the county of Westmorland, to the Constable of the hundred of —, in the said county, to the petty Constables of the town of —, in the said county, and to all and singular our Bailiffs and other Ministers in the said county, as well within liberties as without, greeting:

Forasmuch as *A. I.* of —, in the said county, yeoman, hath personally come before Sir *William Dalton*, Knight, one of our Justices assigned to keep the peace in the said county, and hath taken a corporal oath, that he the said *A. I.* is afraid that *A. O.* of —, in the said county, yeoman, will beat [wound, maim, or kill] him the said *A. I.* and hath therewithal prayed surety of the peace against him the said *A. O.* [Or, if for the good behaviour, — hath taken a corporal oath, that *A. O.* of —, in the said county, yeoman, hath threatned to beat him the said *A. I.* or to burn the house of him the said *A. I.* and hath therewithal prayed surety of the peace against him the said *A. O.*] Therefore we command and charge you, jointly and severally, that immediately upon the receipt hereof you bring the  
said



saied *A. O.* before the saied Sir *William Dalton*, to find sufficient surety and mainprize, as well for his personal appearance at the next general Quarter Sessions of our Peace, to be holden at Appleby, or elsewhere, in and for the saied county, as also for our peace in the mean time to be kept towards us and all our liege people, and chiefly towards the saied *A. I.* that is to say, that he the saied *A. O.* shall not do, nor by any means procure or cause to be done, any of the saied evils, to any of our saied people, and especially to the saied *A. I.* [Or, if for the good behaviour, —, as also for his good behaviour in the mean time, towards us and all our liege people, especially towards him the saied *A. I.*] Witness the saied Sir *William Dalton*, at Acornbank, in the saied county, the — day of —, in the — year of our reign.

*A corporal Oath.*

**Y**OU *A. C.* do solemnly swear, that you are in bodily fear of *G. P.* and that you have cause to suspect, that he the saied *G. P.* against whom you now pray the peace, will beat, wound, maim or kill you; and furthermore, that you do not pray the peace against him out of malice or ill will, but merely and only out of such fear: So help you God.

*Another Warrant for the Peace, or good Behaviour.*

*Westmorland.* { To the Constables of the Town of —, in the saied County, and to either of them.

**F**ORASMUCH as *A. I.* the wife of *B. I.* of your saied town, labourer, hath required sureties of the peace [or, of the good behaviour] before me *Thomas Strickland*, Esq; one of the Justices of our Lord the King, assigned to keep the peace in the saied county, against *A. O.* of our saied town, butcher, and withal hath



hath taken her corporal oath before me, that she requireth the same not for any private malice, hatred, or evil will, but simply that she is afraid, that he the said *A. O.* will do to her some bodily mischief [or as the case shall be: And if it be for the good behaviour, then add ———], and that he the said *A. O.* hath threatened to do some bodily mischief to her the said *A. I.* or to burn her houses] These are therefore, in the name of our said Lord the King, to charge and command you, that immediately upon sight hereof, you or one of you do bring the said *A. O.* before me, to find sufficient sureties, as well for his personal appearance at the next general Quarter Sessions of the Peace, to be holden in and for the said county, as also that he the said *A. O.* shall in the mean time keep the peace, [or, be of the good behaviour] as well towards our said Lord the King, as towards all his liege people, and especially towards the said *A. I.* Dated at Dalham Tower, in the said county, the ——— day of ———, in the ——— year of the reign of our said Lord George the third, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth.

*Recognizance for the Peace or good Behaviour.*

*Westmorland.* **B**E it remembred, that on the ——— day of ———, in the ——— year of the reign of our Lord George the third, of Great-Britain, France, and Ireland, King, defender of the faith, and so forth, *A. N.* of ———, in the county aforesaid, yeoman, *A. S.* of the same place, yeoman, and *B. S.* of the same place, yeoman, came before me *Thomas Carleton*, Esq; one of the Justices of our said Lord the King, assigned to keep the peace within the said county, and acknowledged themselves to owe to our said Lord the King, to wit, the said *A. N.* the sum of 20 l. and

T t

the



the said *A. S.* the sum of 10 l. and the said *B. S.* the sum of 10 l. of good and lawful money of Great-Britain, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said *A. N.* shall fail in performing the condition endorsed [*or, underwritten.*]

Acknowledged before me,

*Thomas Carleton.*

The condition of this recognizance is such, that if the within bounden [*or, above bounden*] *A. N.* shall personally appear at the next general Quarter Sessions of the Peace, to be holden in and for the county aforesaid, to do and receive what shall then and there be enjoined him by the Court, and in the mean time shall keep the peace [*or, be of the good behaviour, or, shall keep the peace, and be of the good behaviour*] towards the King and all his liege people, and especially towards *A. I.* of —, in the said county, yeoman; Then the said recognizance to be void, or else remain in its force.

*Mittimus for Want of Sureties.*

*Westmorland.* { *To the Constable of —, and to the Keeper of —, in the said County.*

**W**HEREAS *A. N.* of —, in the said county, yeoman, is now brought before me *John Dalton, Esq;* one of the Justices of our Lord the King, assigned to keep the peace in and for the said county, requiring him to find sufficient sureties, to be bound with him in a recognizance for his personal appearance at the next general Quarter Sessions of the Peace, to be holden in and for the said county, and in the mean time to keep the peace [*or, be of the good behaviour*] towards our said Lord the King, and all his liege people, and especially towards *A. I.* of —, in the said county, yeoman; and whereas he the said *A. N.*



*A. N.* hath refused, and doth now refuse, before me to find such sureties: These are therefore, in the name of our said Lord the King, to command you the said Constable, forthwith to convey the said *A. N.* to the common goal of our said Lord the King [or, to the house of correction] at ———, in the said county, and to deliver him to the Keeper thereof there, together with this precept: And I do, in the name of our said Lord the King, hereby command you the said Keeper, to receive the said *A. N.* into your custody in the said goal [or, house of correction] and him there safely to keep, until he shall find such sureties as aforesaid. Given under my hand and seal, at Acorn Bank, in the said county, the ——— day of ———, in the ——— year of the reign of our said Lord George the third, of Great-Britain, France, and Ireland, King;

*The Form of a Superfedeas,*

*Westmorland.*

**R**OGER WILSON, Esq; one of the Justices of our Lord the King, assigned to keep the peace within the county aforesaid, To the Sheriff, Bailiff, Constables, and other the faithful ministers and subjects of our said Lord the King, within the said county, and to every of them, greeting.

Forasmuch as *A. N.* of ———, in the said county, yeoman, hath personally come before me at Casterton, in the said county, and hath found sufficient surety, that is to say, *A. S.* of ———, yeoman, and *B. S.* of ———, yeoman, either of the which hath undertaken for the said *A. N.* under the pain of 20 l. and he the said *A. N.* hath undertaken for himself, under the pain of 40 l. that he the said *A. N.* shall personally appear at the next general Quarter Sessions of the Peace, to be holden in and for the said county, then and there to do and receive what shall be enjoined him by the said Court, and



in the mean time shall well and truly keep the peace [or, be of the good behaviour] towards our said Lord the King, and all his liege people, and especially towards *A. I.* of —, yeoman; Therefore, on behalf of our said Lord the King, I do command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means, for the said cause, to molest the said *A. N.* and if you have, for the said occasion, and for none other, taken and imprisoned him the said *A. N.* that then him you deliver, or cause to be delivered and set at liberty, without further delay. Given at Casterton aforesaid, in the county aforesaid, under my seal, this — day of —, in the — year of the reign of —.

*Release of the Surety for the Peace, or good Behaviour.*  
*Westmorland.* **B**E it remembred, that on the — day of —, in the — year of —, the aforesaid *A. I.* hath come before me the said *Roger Wilson*, Esq; and freely remised and released, as much as in him lieth, the aforesaid security of the peace, [or, of the good behaviour] by him prayed before me against the above named *A. N.* In witness whereof, I the said *Roger Wilson* have hereunto set my seal. Given, &c.

*This is to be written under the recognizance, and if the Justice only sign, without sealing it, it is well enough, especially where the recognizance is without seal.*

*Or, the Release may be by itself, thus:*

*Westmorland.* **B**E it remembred, that *A. I.* of —, in the said county, yeoman, on the — day of —, in the — year of the reign of —, came before me *William Tatham*, Esq; one of the Justices of our Lord the King, assigned to keep the peace



peace within the said county, at Askham, in the said county, and there remised and freely released to *A. O.* of —, in the said county, yeoman, the surety of the peace [or, good behaviour] by him the said *A. I.* before me prayed against the said *A. N.* Given, &c.

Or, if it is before another Justice, then say, — the surety of the peace [or, good behaviour] which he has against *A. O.* of —, in the said county, yeoman. Given, &c.

But note, that none of these releases will discharge the recognizance, or the appearance of the party bound thereby; but that he must appear according to the condition of the recognizance, for the safeguard of his recognizance.

Liberate to discharge one committed for Want of Sureties.

Westmorland. **S**TANWIX NEVINSON, Esq; one of the Justices of our Lord the King, assigned to keep the peace in the county aforesaid; to the Keeper of his Majesty's goal at —, in the said county, greeting.

Forasmuch as *A. O.* in the prison of our said Lord the King, in your custody now being, at the suit of *A. I.* of —, in the said county, yeoman, for the want of his finding sufficient sureties for his personal appearance at the next general Quarter Sessions of the peace, to be holden in and for the said county, and for his keeping the peace [or, being of the good behaviour] in the mean time, towards our said Lord the King, and all his liege people, and especially towards the said *A. I.* hath found before me sufficient sureties, to-wit, *A. S.* of —, yeoman, and *B. S.* of —, yeoman, either of which hath undertaken for the said *A. O.* under the pain of 20 l. and he the said *A. O.* hath undertaken for himself, under the pain of 40 l. that he the said *A. O.* shall and will personally appear at the next general Quarter



Quarter Sessions of the Peace, to be holden in and for the said county, and shall well and truly keep the peace [or, be of the good behaviour] in the mean time, towards our said Lord the King, and all his liege people, and especially towards the said *A. I.* Therefore, on the behalf of our said Lord the King, I do command you, that if the said *A. O.* do remain in the said goal, for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that, upon the pain that will fall thereon. Given under my seal at Newby Hall, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our said Lord George the third, of Great-Britain, France, and Ireland, King,

*Examination of a Vagrant.*

*Westmorland.* **T**HE examination of *A. I.* a rogue and vagabond, taken on oath before me \_\_\_\_\_, one of his Majesty's Justices of the Peace in and for the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_:

Who on his oath saith, that he was born at \_\_\_\_\_, [and so trace out the history of his life, so far forth as to ascertain his legal place of settlement.] *A. I.*

Taken and signed the day and year above written, before me the abovesaid

†  
his mark.

*J. P.*

*Warrant to the Constable for whipping a Vagrant,*

*Westmorland.* { To the Constable of \_\_\_\_\_.

**F**ORASMUCH as *A. I.* a rogue and vagabond, was this day found wandering and begging in the parish of \_\_\_\_\_, in the said county, not having obtained



obtained any legal settlement there, and was thereupon apprehended, and is now brought before me *Hugh Robinson*, Clerk, one of the Justices of our Lord the King, assigned to keep the peace within the said county, that he may be punished, and dealt withal according to law. These are therefore to command you to strip, or cause to be stripped, the said *A. I.* naked from the middle upwards, and to whip him, or cause him to be publicly whipped, at the common whipping-post in your said parish; and afterwards to remove and convey the said *A. I.* according to the directions of the pass herewith delivered to you. Given under my hand and seal at Lowther, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of \_\_\_\_\_.

*Vagrant Pass within the same Jurisdiction.*

*Westmorland.* { To the Constable of \_\_\_\_\_, in the said County, to receive and convey; and to the Churchwardens, Chapelwardens, or Overseers of the Poor, of the Parish of \_\_\_\_\_, in the said County, or either of them, to receive and obey.

**W**HEREAS *A. I.* was apprehended within the constablewick of \_\_\_\_\_ aforesaid, in the county aforesaid, as a rogue and vagabond, *videlicet*, and upon examination of the said *A. I.* taken before me *J. P. Esq;* one of his Majesty's Justices of the Peace in and for the said county (which examination is hereunto annexed) it doth appear, that \_\_\_\_\_. These are therefore to require you the said Constable to convey the said *A. I.* in the next direct way to the said parish of \_\_\_\_\_, within the said county, and there to deliver him to some Churchwarden, Chapelwarden, or Overseer of the Poor, of the same parish of \_\_\_\_\_, to be there provided for according to law. And you the said Church-



Churchwardens, Chapelwardens, and Overseers of the Poor, are hereby required to receive the said person, and provide for him as aforesaid. Given under my hand and seal the — day of —, in the year of our Lord —.

*Vagrant Pass from County to County.*

*Westmorland.*

[To the Constable of —, in the said County of W. and also to all Constables and other Officers whom it may concern, to receive and convey; and to the Churchwardens, Chapelwardens, or Overseers of the Poor, of the Parish of —, in the County of —, or either of them, to receive and obey.

**W**HEREAS *A. I.* was apprehended in the township of — aforesaid, in the county of W. aforesaid, as a rogue and vagabond, *videlicet*, —, and upon examination of the said *A. I.* taken before *J. P.* Esq; one of his Majesty's Justices of the Peace in and for the said county of W. upon oath (which examination is hereunto annexed) it doth appear, that —. These are therefore to require you the said Constable to convey the said *A. I.* to the town of —, in the county of —, that being the first town in the next precinct through which he ought to pass in the district way to the said parish of —, in the county of —, to which he is to be sent, and to deliver him to the Constable or other officer of such first town, in such next precinct, together with this pass, and the duplicate of the examination of the said *A. I.* taking his receipt for the same. And the said *A. I.* is to be thence conveyed on in like manner to the said parish of —, in the county of —, there to be delivered to some of the Churchwardens or Overseers of the Poor of the same



same parish of ———, to be there provided for according to law. And you the said Churchwardens, Chapelwardens, and Overseers of the Poor, are hereby required to receive the said person, and provide for him as aforesaid. Given under my hand and seal the ——— day of ———, in the year of our Lord ———.

*Warrant to secure a Lunatic.*

*Westmorland.* { *To the Constables, Churchwardens, and Overseers of the Poor, of ———.*

**W** H E R E A S it hath been proved before us ———, two of the Justices of our Lord the King, assigned to keep the peace within the said county, upon the oaths of *A. W.* and *B. W.* both of the parish of ———, in the county aforesaid, gentlemen, that *A. L.* late of ———, frequently goeth at large in the said parish of ———, and that he the said *A. L.* is by lunacy so far disordered in his senses, that he is dangerous to be permitted to go abroad; and that his legal settlement is in the parish of ———: These are therefore to authorize and require you, and every of you, to cause the said *A. L.* to be apprehended, and kept safely locked up in the house of *A. K.* at ———, in the said county, the said *A. K.* being willing to keep and entertain him the said *A. L.* for a reasonable allowance in that behalf; and the said house being a secure place: And the said *A. L.* is to be kept so locked up only so long as such lunacy or disorder shall continue, and no longer. Given under our hands and seals at ———, in the said county, the ——— day of ———.

*Record to avoid the Settlement of a Bastard Child born in Vagrancy.*

*Westmorland.* **B** E it remembered, that on the ——— day of ———, in the ——— year of the reign of our Lord George the third, of Great-Britain,  
U u



tain, France, and Ireland, King, defender of the faith, and so forth, *A. B.* and *C. D.* Overseers of the Poor of the parish of ———, in the said county, at ———, in the said county, do bring unto me ———, one of the Justices of our said Lord the King, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, the body of one *A. P.* and do complain unto me the Justice aforesaid, and give me to be informed, that on the ——— day of ———, in the year aforesaid, at ———, in the parish aforesaid, in the county aforesaid, she the said *A. P.* was wandering and begging, and that she the said *A. P.* then and there, viz. on the said ——— day of ———, at ——— aforesaid, in the parish aforesaid, and county aforesaid, so wandering and begging, was delivered of a (male) child; and that thereby she the said *A. P.* hath become chargeable, and is now chargeable, to the said parish of ———, and that she the said *A. P.* had not then, nor yet hath, any lawful settlement in the said parish of ———. And thereupon they the said Overseers of the Poor of the parish aforesaid, do pray of me the Justice aforesaid, that for themselves, and for the other inhabitants of the parish aforesaid, a due remedy may be provided, and that justice may be done in that behalf, according to the form of the statute in that case made. Which complaint, information, and prayer, by me the Justice aforesaid being heard, I the said *J. P.* at ——— aforesaid, in the county aforesaid, on the said ——— day of ———, in the year aforesaid, upon the examination of the said *A. P.* upon oath by me unto her upon the holy gospel administered, and upon other lawful evidence and testimony before me had and made, do find the said complaint and information to be true. And thereupon it is considered by



by me the Justice aforesaid, that she the said *A. P.* be committed, and is by me committed, to the house of correction at —, in the county aforesaid, until the next Quarter Sessions of the Peace, to be holden within and for the said county. In testimony whereof, I the said *J. P.* the Justice aforesaid, at — aforesaid, in the county aforesaid, the — day of — aforesaid, in the year aforesaid, unto this record do set my seal.

*Directions for Coroners; their Fees, &c.*

**A** CORONER's office is very ancient, and has been, and yet is, held in high esteem; for the Lord-Mayor of London is held to be Coroner there, 2 Pro. 531. And the Lord Chief Justice of the King's Bench is sovereign Coroner of all England, 4 Po. 57, b. And he upon view of the body of one killed in open view, as a Coroner, may make a record returnable in the King's Bench. *Ibid.*

But to come nearer to the intended purpose; amongst other matters, it is the Coroner's business to view the bodies of such as come to casual deaths, make away themselves, or are made away by others, or suspected to be put out of the world by a violent death, or dying languishing in prison, where there may be any suspicion the party died not naturally, but by hard usage, starving, or that the imprisonment caused his death, &c. For he is to know, and certify, how the King came to lose a subject.

He is to have *visum corporis* of a prisoner dying in a goal, by reason of duress. And the Jury or Inquest, before the Coroner, is to be of persons within the four next adjacent villages, made by the Bailiffs or Constables; and no challenge lies to any of them so legally summoned on the Inquest, 1 Cro. 135. And upon a view of the body, and a strict examination how the



party came by his death, they must give in their verdict to the best of their judgment, according to the evidence, or other matters, appearing to them, whether it be *felo de se*, he killed or drowned himself, &c. or died by the hand of other person or persons, or by the fall of the house, wall, timber, kick of a horse, or any other matter or thing which brought the party to an untimely end: And the Coroner being so satisfied, he is to give his warrant for the burial of the dead person, according as it shall be found by the verdict; and an indictment may be grounded thereon against the persons concerned; and in this case he hath power to commit or bind over the party as he sees cause.

He having power only to enquire *super visum corporis*, how the person came by his death, by whom and in what manner, and what goods and chattels he had at the time of the fact committed, therefore if the body cannot be found, he hath no authority to make any inquisition; but in such case the matter may be presented to the Justices in their Quarter Sessions, and there found by the Jury; and if the person was *felo de se*, this will entitle the King to a forfeiture of his goods.

But such a finding and indictment is traversable; and so is an indictment *super visum corporis*; though it hath formerly been held otherwise. Now the reason why he is to take an inquisition only *super visum corporis* is, that the Jury may see whether the wound is mortal or not; and therefore the wound should be set forth; and it must be alledged that it was *mortal*, and that the party died of it: For where the inquisition was that the dead person, *cum cultro pretii, &c. jugulum suum voluntarie et felonice et ut felo de se secuit et seipsum occidit*, it was quashed, because it did not set forth the wound, and that it was mortal, and that he died of the wound. It is true, the word *murdravit* was omitted, but there seems



seems to be no necessity of that word in an inquisition, as in an indictment; because there are degrees in the offence where one man is killed by another: For in some cases it is murder, in others manslaughter, and in others homicide *per infertunium*; and the word *murdravit* was inserted at first in indictments to exclude the offender from the benefit of clergy: But there are no degrees in the offence where a man is *felo de se*; and therefore in such case the word *murdravit* is not necessary.

This inquisition being quashed for the reasons before mentioned, the Coroner caused the body to be taken up again, though it had been buried seven months, and thereupon another inquisition was found; of which complaint was made, it being done at such a distance of time that the putrified body might infect the people, and that it was done without leave of the Court; for, where the body hath lain some time, it ought not to be dug up without leave: And to this the Court agreed, it being a nuisance so to do; but at last this inquisition was traversed, and a trial ordered at the next assizes in the proper county.

A man became *felo de se*, and another owed him money, against whom an information was brought in the name of the Master of the Crown-Office, for that the money was forfeited to the King; but in such case the substance of the inquisition must be set forth in the information, otherwise it is void. As for the witnesses, the Coroner must take their depositions in writing, attested under their hands, and he may bind them over to the next goal-delivery, to give their evidence there. If the Jury which are impannelled by him are sworn, and the witnesses are ready to give their evidence, he may adjourn them to another day, and bind them by a recognizance to appear again at that time.

When



When he hath notice given to come and view the body, he must make a precept, directed to the Constable where it lieth, to summon twenty-four men (who are to be of the Jury) to appear before him at a certain day and place, to execute such matters and things as shall then and there be given to them in charge, concerning a dead body, then lying in such a place, &c.

And if the body shall be buried before he comes, the village shall be amerced; and he may cause it to be digged up again; the village must be also amerced for not sending for him in due time, so that the body is putrified before he comes, to the great annoyance of the Jury and people.

He may cause any nuisance to be found, by which the death of the party was occasioned; as that such a bridge was in decay, and by reason of a breach there, the person going over it, fell into the river and was drowned; in such case the town shall be amerced: But then it must be found that the town was to repair it.

He is to take an inquisition upon the flight of the felon; and this is to entitle the King to a forfeiture of the goods.

If he is guilty of any practice to suppress the evidence for the King, the inquisition may be set aside upon a motion in the Court of King's Bench, and oath made of his misbehaviour; and if he neglect or omit to make an enquiry after notice, the Chief Justice of said Court may appoint Commissioners to do it; but then it must be *super visum corporis*.

If he doth not come, having notice of the death of any person, or if he doth come, and neglects to bind over the witnesses to the next goal delivery, or doth not certify the recognizance and inquisition as he ought to do, he may be discharged of his office, and fined by the Court.

And



And therefore where a Coroner did not return his inquisition; the Jury having found the fact to be murder, and the same person against whom it was found being indicted at the next assizes for the same fact, the Jury there found it but manslaughter, whereupon he confessed the indictment, and pleaded a pardon, which was allowed; yet the Court made him plead to an indictment upon the Coroner's Inquest, which he did; and it was *autarfoits convict*, &c. But for this neglect the Court fined the Coroner.

In some cases a *melius inquirendum* may be granted, upon moving the Court of King's Bench for that purpose, but never after an inquisition *super visum corporis* is filed, unless it is quashed upon oath made of some misdemeanour either in the Coroner or Jury; as, that they did not give a verdict according to evidence, &c.

The forfeitures in these cases are called *deodands*, i. e. given to God, to appease his wrath for shedding blood; and for that purpose to be disposed by the King in works of charity.

But then it must be when any *moveable* things which are *inanimate*, or a beast, causeth the untimely death of the person slain, without the *will*, *offence*, or *fault* of himself; and this must be found by inquisition, as aforesaid, for till then it is not forfeited.

Anno. 3 William, a coachman driving furiously through the street at Oakingham, in Berks, run the fore-wheel against a post, and was thrown out of the box, and killed between the wheel and the post.

The Coroner's Inquest found the post a *deodand*; which being contrary to the received opinion, that nothing can be forfeited but what *moves* to the death of the party, and the post being fixed in the ground was *immoveable*; therefore a motion was made for a *melius inquirendum*. Some of the Jury were ordered to attend the



the Court, which they did; but there being no misdemeanour proved against them, the Court refused to grant a *melius inquirendum*, there being no other reason alledged; but because they found a post to be a *deodand*.

Lastly, as to choosing this officer; it is done by virtue of the writ *de coronatore eligendo*, directed to the Sheriff, who gives notice of the time and place, and there he is chosen by the freeholders of the county; and when he is chosen the Sheriff is to certify it, and the name of the person.

He is likewise to administer the oath of his office to him; and because he is elected by the freeholders, his office is not determined by the demise of the King.

When he is thus chosen he is then a judicial officer, and for that reason cannot make a deputy; and being an officer at common law, for the administration of justice, he was to have no fee for executing his office, till by the statute of 3 Henry 7, he hath authority to demand the fee of 13 s. 4 d. of the goods of the slayer, *super visum corporis*; and if he hath none, or is fled, then the town may be amerced, for suffering the criminal to escape, and he may take his fee out of that amercement.

But he cannot demand any fee upon *viewing the body killed by any misfortune*; and in such case, if he should refuse to do his office without being paid his fee, he forfeits 40 s. per 1 Henry 8, cap. 7.

So likewise if he exacts above 13 s. 4 d. for himself, *super visum corporis*, and 2 s. for his clerk, he shall be fined 40 s.

He is likewise a ministerial as well as a judicial officer; for if there is any just exception against the Sheriff, as being of kin, or tenant to either of the contending parties, or where there is a reasonable cause to suspect any partiality; in such case the process shall be directed to the Coroner, and he shall return the Jury: But then  
all



all proceſs in the ſame ſuit muſt likewise be directed to him, though a more impartial Sheriff ſhould be made depending the action. If he return *fugam fecit*, 'tis not traſverſable; but if his Inqueſt find the perſon *felo de ſe*, it may be traſverſed.

*Dead Bodies.*

The law, ſays Raſtal, is, if a man or woman, &c. be wounded, and thereby in peril of death, the party that did it, or was helping in doing it, being apprehended, may be committed and kept in cuſtody, till it be perfectly known, by the testimony of ſkilful perſons, whether the wounded party will live or die of thoſe wounds or blows given; and if he die, the Coroner, upon view of the dead body, ſhall enquire of him or them that have done the fact, whether man or woman, and take the names of them that were preſent as witneſſes, or any otherways knowing of it. As alſo he ſhall take eſpecial notice of the abettors or concealers in, or towards the fact, or any therein concerned, and ſo found, to inroll and certify the ſame.

The Coroner, according to his inqueſt, ſhall give in their verdict, if there be cauſe; for he is to take care to proſecute the offender or offenders, if the relations of the deceased, or others, reſuſe or are ſlack in ſo doing; ſo that if any man, &c. be ſlain or murdered, there- of the ſlayers, murderers, abettors, maintainers and comforters, may be indicted, and brought to arraignment and trial of the iſſue, whether they are guilty of the murder, manſlaughter, &c. or not guilty; which may be done any time in a year and a day after the ſame felony and murder committed, which muſt be dated from the time of the wounding or beating, not from the time of the dying, if the party languish and live any time after, though ſomewhat conſiderable, as a week, a



month, or more. And the wife, or heir of the person so slain or murdered, as the case requires, may commence his or her appeal, in proper person, any time within the year after the said felony done, before the Sheriff and Coroner of the county where the said felony and murder was done, or before the King in his bench, or Justices of goal delivery. And the appellant in any appeals of murder, or death of a man, &c. where battel by the course of common law lieth not, may make their attornies, and appeal by the same.

And the said appeals, after they be commenced, may be proceeded in to the end of the suit and execution.

If a murderer or manslayer escape, the Justices of Peace have power to enquire of such escapes, and to certify them in the King's Bench; and that after the felony found, the Coroners deliver their inquisitions before the Justices the next goal delivery, in the shire or county where inquisition is taken; and they are to proceed against such murderers, if they be in goal, or else certify the inquisition in the King's Bench, or, as it is worded, put the said inquisition before the King in his Bench.

All such Coroners as are remiss in their office, or duty of their place, and make not their respective inquisitions upon the view of the dead body, and certify not according as aforesaid is ordained, every Coroner for such offence forfeits to the King 5 l. by 3 Henry 7, cap. 1.

And now, that the Coroner may not be ignorant what is murder, I shall briefly lay it down in general, and many material particulars.

#### Of Murder.

This is the killing any person within the realm upon malice forethought, the death ensuing within a year and a day after the fact. Which definition is thus explain-



explained; and first as to *killing*, this may be done by famishing, poisoning, smothering, strangling, and by several other means, and with several instruments; as by laying a sick man in the cold, by reason whereof he died; by hiding an infant under the leaves of trees, who was afterwards destroyed by vermin; by setting a dog at a man accustomed to bite or to do mischief, he knowing thereof. And, as to the person *killed*, it must be in *rerum natura*; for if a woman take poison to destroy the child within her, though she is quick, it is not felony if it die with that poison, unless it is first born, and die afterwards by that means; but it is a great misprison. But he who advises her to destroy it before it is born, and if it happens afterwards to be born, and then killed, the adviser is accessory to the death.

2. The killing must be within the realm; for if a man is wounded, and dieth beyond sea, the criminal cannot be punished at common law, but he may before the Constable and Marshal; and this is by virtue of the statute 22. *Henry 8*, cap. 13.

If a man is wounded at sea, and dieth with that wound on the land, this is an offence, but not punishable (as my Lord Hale tells us) at common law; and yet it cannot be denied but that the killing shall have relation to the death, and not to the wound.

*Striking* in one county, and the person dying in another, the offender shall be tried in that county where the person stricken died; but where a man is accessory in one county to a murder done in another, and when the principal is convicted, and that conviction is certified, the accessory may be tried in that county where he was accessory.

3. As to *malice forethought*, it may be either implied, or express.



*Malice implied* may be collected by several ways and means, viz. from the manner of the act done; as, if a man rides into a fair with an unruly horse, knowing him to be so, and on purpose to do mischief; or throws a great stone over a house amongst a multitude of people, knowing them to be there; these and such like are unlawful acts, and it shall be presumed that the person had an ill design in general, though not against any particular person; and this implies *malice*.

So where a smith struck his servant with an iron bar, and killed him; or if a father, or schoolmaster, correct his son or scholar with improper instruments, which in all probability may kill them, and death ensues, it is murder. So where a woman kicked and stamped on her child's belly, and killed it; in all these cases it is murder, and the law supplieth malice in the offenders.

But in a late case of one Mawgridge, we are told, that if a man assaults another with a dangerous weapon, but without any *provocation*, 'tis *express malice* from the nature of the fault, which in itself is cruel. Such a provocation which may extenuate the fact, and make it manslaughter, must be where there is some actual force or violence offered or done to the person killing by him that was killed; for the most opprobrious words, or affronting gestures, are not accounted in law any provocation, unless there is some assault. But if angry words pass, and afterwards one pulls the other by the nose, or if he only fillips him with his finger, and the person thus assaulted kills the other, this is no more than manslaughter, because the peace was broke by the person who was killed. But where the peace is first broken by the *person killing*, there it is otherwise; and this is the case of Mawgridge before mentioned, viz. he threw an empty bottle at Mr. Cope, which struck him  
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on the head, and immediately drew his sword, and gave him a mortal wound; but between the time of his drawing the sword and the wound given with it, Mr. Cope threw another bottle at Mawgridge, with which he broke his head; but Mr. Cope was killed, his sword being never drawn. This was adjudged murder upon a special verdict, and of malice prepensed, because the throwing the first bottle was with a design to do some mischief, and the sudden drawing his sword was to prosecute that design; and though Mr. Cope threw another bottle at Mawgridge before the wound was given, that will not alter the case, because it was in his own defence, and therefore lawful for him to throw it.

If two men give each other reproachful words, and a third person strikes one of them, and kills him, this is murder.

So where one man assaults another without any provocation, and runs at him with his sword drawn, and then the person assaulted draws his sword in his own defence, and is killed, this is murder. But if two men fight, and a third comes in to assist one of them, and killeth the other; this is only manslaughter, because there was an actual fighting, and the peace broken between the other two, before the third came in. And yet if a man is unduly arrested, or by any other means deprived of his liberty, and he submits without making any resistance, and another in rescuing him kills a man, this is murder; because injuries must not be redressed by force or violence, but by law. If one who is wounded shall neglect his cure, or lives afterwards in a disorderly manner, yet if he dies of his wounds, it is either murder or manslaughter, as the case shall fall out upon the evidence; and the reason is because the wounds were the principal cause of the death which ensued. Malice is likewise implied where one kills another who hath not  
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a *weapon drawn*; which are the exprefs words of the statute 1 Jac. cap. 8, commonly called, *the statute against stabbing*. Five years after the making that statute it was held, that if the person slain had but a *stick* in his hand, it should be accounted a weapon drawn. The words of the statute are, viz. *stabbing another who had not then any weapon drawn, or that hath not then first stricken the party stabbing, and the person dying within six months then next following; this is murder by that statute, without benefit of clergy*. There is a proviso, that the act shall not extend to one who kills another in his own defence, or by misfortune, nor to one who in keeping the peace, or correcting his child or servant, shall unwillingly commit manslaughter.

Several cases have happened upon this statute, which hath been expounded with a great deal of nicety in respect to these words, viz. *Or that hath not then first stricken the party who stabs*. As for instance; in the ninth year of Charles 1, one Byard struck Ward, who struck him again, and then Byard stabbed him: The question was, whether he should have his *clergy*, because the person so stabbed, struck him before the stab was given? And adjudged he should not; because the words *first stricken* in the statute shall be construed the very first stroke given by the person slain at the beginning of the quarrel, and not any stroke before the stab; so that if he who is killed did not give the first stroke, the other who killed him, though he was stricken before the stab, shall not have the benefit of his clergy.

There have likewise been several expositions upon the words what shall be a *weapon then drawn*: As where two quarrelled, and one threw a pot at the other, but it missing him, the other drew his sword and killed him: The matter was found special, and the doubt arising whether



whether the particle *then* should relate to the beginning of the quarrel, or to the time of the stroke, it was the better opinion that it should relate to the beginning of the quarrel; for if in fighting one lets his sword fall, or throws it at the other, and is then killed, it is plain he had not a *weapon then drawn*, that is, either to defend himself or offend his adversary, *at the time when he had the wound given*; but yet because it was once drawn during the quarrel, the prisoner shall have his clergy.

The defendant was indicted for stabbing, and two more were present and abetting him, and they were all found guilty; yet the person who gave the stroke shall be only hanged; and the others shall have their clergy; for where it is known who gave the stab, though all who were present and abetting are principals, yet the statute being so penal, shall be extended to him alone who *actually stabbed the other*.

Anno. 15 Charles, a Welshman having a leek in his hat on St. David's day, was jeered by a porter in the street; and thereupon he took a hammer out of one Marbury's shop, and threw it at the porter, but missing him, killed Marbury: The question was, whether this was within the statute of stabbing? For Marbury had not a *weapon then drawn*; and adjudged that it was not; and probably the reason may be, because the Welshman had no anger against Marbury; and he was within the proviso of the act, which exempts the killing by *misfortune*, as this was. But those who have seen this record tells us, that the Welshman, whose name was Williams, was not indicted for murder, but for manslaughter on this statute; and that if he had been indicted for murder, he ought to have been found guilty, because the provocation was not so great as to excite him to kill another.

Malice shall likewise be implied in many cases where an officer is killed in the execution of justice; but in some



some it is only manslaughter. If a Constable, or any other person assisting him in the execution of his office, is killed, this is murder; but then the person who killed him must know he was Constable, and that he came to keep the peace; otherwise it is no more than manslaughter. All who are present and assisting a person arrested, if the officer is killed, and they know the person was arrested, are principals in the murder.

Several came to rob a park, and one of them killed the keeper; it is murder in all of them, though they were at some distance when the fact was done, because they came into the park to do an unlawful act, and for that reason malice shall be implied.

But in these cases following, it is but manslaughter.

§. As if the officer is doing any thing which is not warranted by law; as if he open a window or door to arrest a man, and is killed, 'tis only manslaughter.

An officer had a warrant to arrest the defendant, *A. B. Knight*, and he was not a Knight, but a Baronet, and the officer was killed; this is manslaughter, because he had no authority to arrest the Baronet, for his warrant was illegal; but if there is only a mistake or error in the process, 'tis otherwise.

A Collector of the chimney-money distrained a silver cup for the duty, and the maid servant, in the absence of her master, hindered him from carrying it out of the house, for which he beat her against a post, and killed her; this was held manslaughter.

Several owlers had loaded wool in order to transport it, which was against law for them to do; they were opposed by the King's officers in the night time, and one of the owlers shot off a gun, and killed one of his own company; this was only manslaughter, because it did not appear that he discharged the gun against any of the King's officers, though it might be reasonably intended



tended he did; because he was armed with a gun, and was in prosecution of an unlawful design, in which he was obstructed; but if it had been found that he discharged the gun at the King's officers, in such case, if he had killed one of his own party, though by accident, it had been murder, but not in the rest, unless they knew he designed to kill any of the King's officers.

In some cases malice may be collected out of the circumstances, shewing the temper of the person killing. As if one assaults another with an intention to rob him, and being resisted, he kills the true man, this is murder; so it is if a goaler kills a prisoner by hard usage.

If two fight in a tavern, and are parted, and one of them alledgeth the place to be very inconvenient to fight in, and thereupon they appoint another place, to which they go immediately, and there fight, and one is killed; it is murder, because reason prevailed more than passion, so as to judge of the conveniency of the place. So if two quarrel in the morning, and fight in the afternoon, and one is killed, it is murder; for there was a reasonable distance of time by which the sudden heat might be allayed; and therefore the second meeting must be with a malicious intent to do mischief.

There is a very nice distinction made by some former writers on this subject, viz. If two quarrel, and one is wounded, afterwards they meet, and the wounded man kills the other, it is murder; because malice shall be intended in him, occasioned by the wound he had received; but if the wounded man had been killed by the other, that would have been only manslaughter, because it shall be intended that his malice was over by giving the wound. Some provocations are so violent, that they mitigate the crime, and make it manslaughter, which otherwise would have been murder: As where the husband found his wife in the very act of adultery

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with



with another, and killed him. So where two boys fought near their fathers houses, and one of them being bloody, went immediately to his father and complained, he being then a mile from the other boy, but he went forthwith and beat him so that he died; this was held only manslaughter.

Malice expresse in the principal who doth not act; as where a man resolveth to do any thing which is unlawful, and death ensueth, this is murder. If the deceased challengeth the other, who refuseth to fight, and afterwards upon importunity they meet, and he kills the other, it is murder. All who are present and assisting are principals; but if they are not present, yet if they come to do an unlawful act, and are in the same house and place, though at a distance, it is murder in all.

Where the act is deliberate and malicious, and death ensueth, though the offender did not intend to kill any one, yet it is murder: As where a park-keeper finding a boy in the park stealing wood, tied him to a horse's tail, and the horse running away with the boy thus tied, he was killed; this is murder. If there is malice between two, and one striketh at the other, and killeth a third person, this is murder. So where one brought poison to kill another, and a third person eat it, it is murder. Two or more come to do an unlawful act, and one of them killed another, it is murder in both, if abetting or ready to abet; but then he must know of the malicious design of the other, and the killing must be in pursuance of that unlawful act; and not only so, but it must be done deliberately; for if upon a sudden affray, it is only manslaughter; besides, the unlawful act ought to tend to the hurt of another, either immediately, or by consequence; as where persons assemble in a riotous manner with offensive weapons, and one is killed, it is murder. Two having malice fight, the servant of one  
of



of them not knowing the malice, killeth the other; this is murder in the master, and manslaughter in the servant. One commands another to kill a third person with a sword, and he killed him with a gun; this is murder in the *person commanding*; but if by mistake he had killed another, and not the person whom he was commanded to kill, then it is murder in the person killing, and he who commanded the killing the third person, is not so much as accessory. If one command another to beat a third person, and he doth it so that death ensueth, it is murder in him, and the person commanding is accessory to it.

In some cases the crime is aggravated by the quality and condition of the offender; as where a *maid-servant* and a *stranger* conspired to rob the mistress, and in the night-time the *servant* let the *stranger* into the house, and lighted him to her mistress's bed, where he killed her; the servant only holding the candle; this was adjudged murder in the person who did the fact, and petty treason in the servant. So where the wife and her servant agreed upon a time and place to kill the husband, and the servant alone, in the absence of the wife, did the fact; this is petty treason in both; but if he had been killed by one who was not his servant, the wife should be hanged, and not burnt, because she cannot be guilty of *petit treason*, where the principal is only guilty of *murder*.

By a statute made in the reign of King James I, it is enacted, that where a *bastard child should be concealed*, it should be taken to be born alive; and if it is dead, it shall be adjudged to be murdered. So that by this statute *concealment* is made the crime, and an evidence that the bastard was murdered. Now, if a woman with child of a bastard, and going well to bed, is taken with travelling pains in the night, and *knocks for some body to assist her*, but is delivered without any help, and then puts the child in a  
Y y 2 trunk,



trunk, and conceals it for a day, if there is no sign of hurt on the body, it is not murder within this statute, because *by her calling for some assistance*, she had no intent to conceal it; and there being no visible hurt, it shall be taken that the child was dead-born; but if there had been an intent to conceal it, then it is murder, though the child was not born alive.

Of Manslaughter.

**M**ANSLAUGHTER is the unlawful killing of a man upon a sudden provocation, in the heat of blood, and without any malice.

By this definition it appears, that there must be no deliberate act, but it must be a *sudden falling out*; and the act which they are about, must be unlawful; for if it is lawful, and death ensues, then it is only *chancemedley*.

A *sudden falling out*, is where two men fight, and one of them breaks his sword, but a stranger immediately lends him another, with which he kills his adversary; this is manslaughter in both. Two fight and are parted, but immediately meet again, and one kills the other; this is only manslaughter, because it was a continued *affray*. If there is malice between two, and the deceased challenged the other, who refused to meet, but said he should go to such a place, where the deceased met him and was killed, this is manslaughter. Where a man entered an house with force, and those who came to take possession set it on fire, and he who was within shot and killed another without; it is manslaughter, because his entry was unlawful. A servant draws a sword in defence of his master, and in the quarrel the master is killed, it is manslaughter in the servant. A prisoner in execution for debt escapes, and the keeper coming to the place where he was, kills him, either in pursuing or resisting him; it is manslaughter.

Unlawful



Unlawful acts where death ensues are many; I shall instance in a few: *Playing at foils, throwing stones, shooting at deer* in another man's park, *forcibly entering and ejecting another*, and such like, are unlawful acts, but without any malicious intent to kill any one; and therefore where death ensues in these, and such like acts, it is only manslaughter.

Bailiffs coming to serve an execution, and the debtor having notice of it, shuts his doors, which the officers break open, and one is killed; it is only manslaughter, because the breaking the door was unlawful: The offender hath the benefit of his clergy the first time, but forfeits his goods and chattels.

## Of Chancomedley.

**T**HIS is where a man is killed by another casually, when he is doing any thing which is lawful, and without any intent to do hurt; as shooting at a bird is a lawful act, and if in such case a man is killed, it is only *chancomedley*; and so it is where a father corrects a son or a servant, and death ensues.

A house was building at some distance from the highway, and one of the workmen being about to throw a piece of timber from the house, called out, *stand clear*, the timber fell upon one of the labourers, and killed him; this was held *chancomedley*, for he was doing a lawful act, and had no intention to do any hurt, because he gave notice what he was about to do; but if it had been in the streets of London, or any other great city or town, it had been *manslaughter*, because of the continual passing of the people; but in this case the special matter must be found, that the Court may judge whether the killing was by misfortune or not; for it is not sufficient to find it generally.



My Lord Coke tells us, there is no exprefs judgment in *chancemedley*, but the offender forfeits his goods, and hath a pardon of course, which is obtained by a certificate of the Judge to the Lord Chancellor, who thereupon issues out a pardon.

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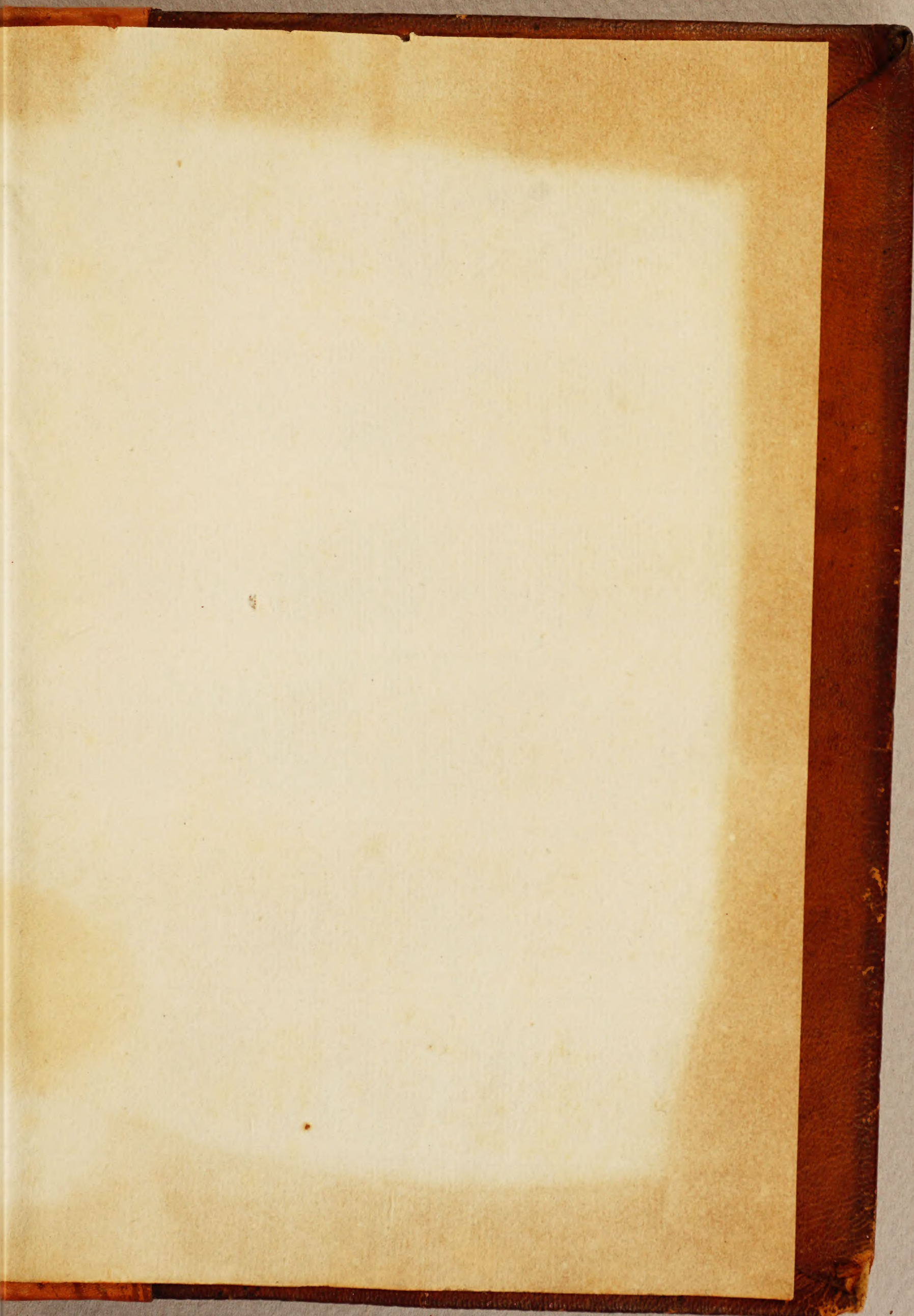
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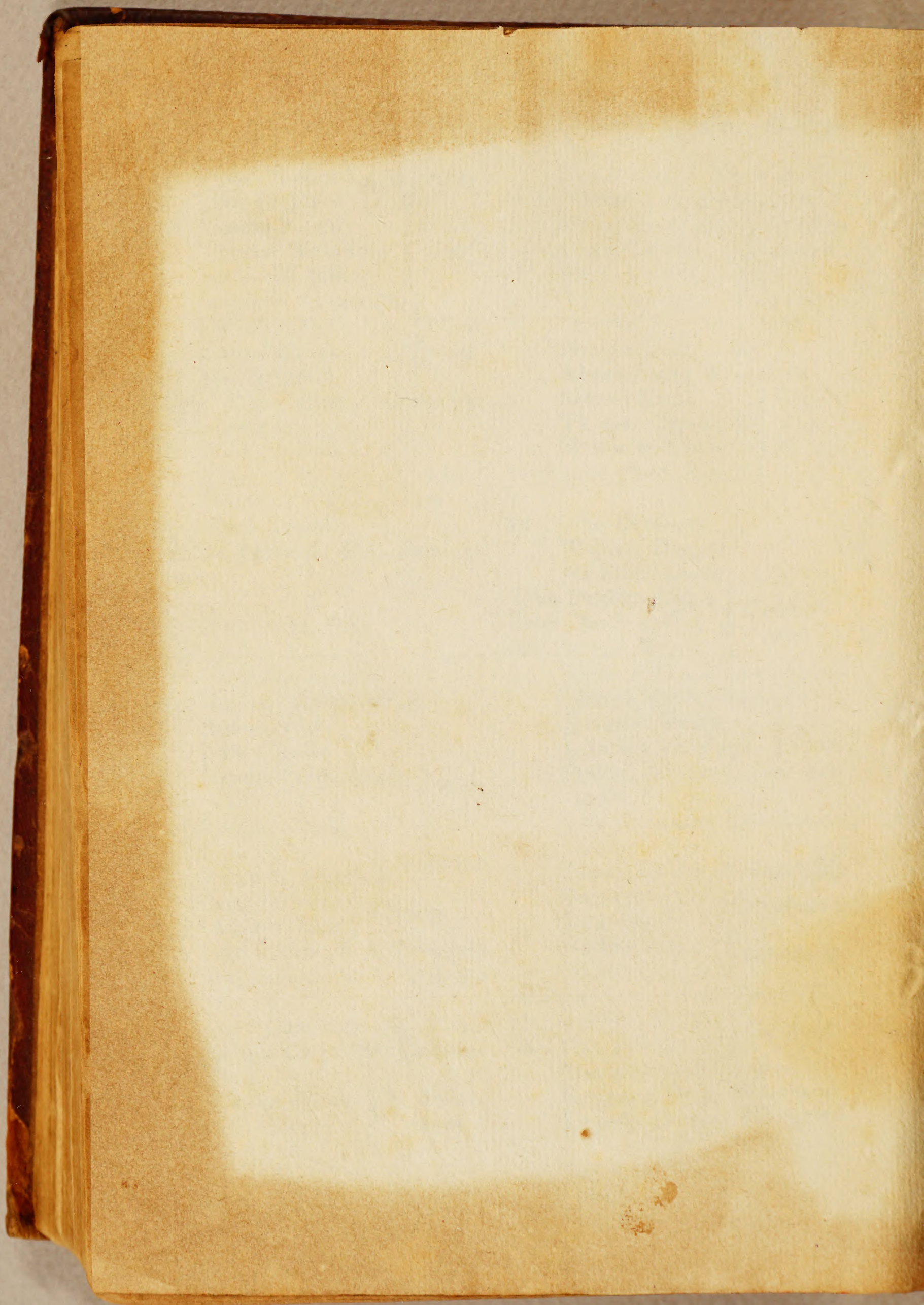
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